

Rights of Treasure Hunters under Puerto Rico Law:
Application of Article 285 of the Civil Code through the Jones Act, the Puerto Rican Underwater
Archaeological Protection Act and the Abandoned Shipwreck Act of 1987

by
Omar Carmona-Sánchez*

*Where there is a legal right, there is also a legal remedy by suit,
or action at law, whenever that right is invaded.¹*
-- US Chief Justice Marshall

I. INTRODUCTION

Since its discovery by Christopher Columbus² in 1493, the island of Puerto Rico³ has been one of the most important ports in the Caribbean. Spanish Galleons,⁴ Dutch, French and English vessels, and in some cases pirate ships themselves, carrying great treasures⁵ docked at

* Omar Carmona-Sánchez is a Third Year Law Student at the Pontifical Catholic University of Puerto Rico School of Law and member of the *Puerto Rican Law Review*. He will like to express special thanks to his colleagues for three great years of friendships and unforgettable experiences. To his parents, Gumersindo Carmona-Rivera and Olga Sánchez-Alicea, the most sincere thank you and acknowledgment for all their support and love. A candid recognition to his long time friend and mentor, Dr. Humberto López-Cruz, this work is a product of all his teachings. To the Rivera Family, Arcadio and Carmen, and his lovely girlfriend Zoraida Velasco for their love and understanding that took him where he never thought possible.

¹ *Marbury v. Madison*, 5 U.S. 137, 163 (1803).

² Christopher Columbus, known as a navigator and explorer, was born between August and October of 1451. He died in 1506. He was named Great Admiral of the Ocean by the Kings of Spain. The world discovered by him observes his 1492 voyage on October 21, a day known as Columbus Day. See SAMUEL ELIOT MORISON, *ADMIRAL OF THE OCEAN SEA - A LIFE OF CHRISTOPHER COLUMBUS* (Morison Press 2007) (1961). See also BJORN LANDSTROM, *COLUMBUS. THE STORY OF DON CRISTOBAL COLON, ADMIRAL OF THE OCEAN & HIS FOUR VOYAGES WESTWARD TO THE INDIES ACCORDING TO CONTEMPORARY SOURCES RETOLD & ILLUSTRATED BY BJORN LANDSTROM* (Macmillian Company 1966).

³ Puerto Rico was discovered by Christopher Columbus during his second voyage on November 19, 1493. It is located in the northeastern Caribbean Sea, east of the Dominican Republic and west of the Virgin Islands. It is consider the smallest in size of the four Greater Antilles. The Island was acquired by the Unites States at the end of the Spanish-American War in 1898, *infra* note 21. See R.A. VAN MIDDELDYK, *THE HISTORY OF PUERTO RICO: FROM THE SPANISH DISCOVERY TO THE AMERICAN OCCUPATION* (BiblioBazaar 2006) (1903).

⁴ The subject of the Spanish Galleon is very intriguing and fascinating. It deserves a more extensive study. The rights of the Kingdom of Spain over hundreds of their lost vessels continue to be argued today. See ROBERT WELLER, *GALLEON HUNT* (Ernie “Seascribe” Richards ed., R. Weller 1992). See also FERNANDO SERRANO MANGAS, *LOS GALEONES DE LA CARRERA DE INDIAS, 1650-1700* (Publicaciones de la Escuela de Estudios Hispano-Americanos de Sevilla 1985); William J. Broad, *Court Ruling on Spanish Frigates Foils Modern-Day Treasure Hunt*, NY TIMES, July 31, 2000, <http://query.nytimes.com/gst/fullpage.html?res=9C01EFDD133DF932A05754C0A9669C8B63&scp=2&sq=treasure+hunters+spain&st=nyt> (last visited April 15, 2008).

⁵ See JOHN CHRISTOPHER FINE, *TREASURES OF THE SPANISH MAIN: SHIPWRECKED GALLEONS IN THE NEW WORLD* (The Lyons Press 2006); Ricardo Cortés Chico, *Profundo tirijala por un botín*, EL NUEVO DÍA, Aug. 31, 2006, at 1, available at ANENDI.COM, File No. 37472 (discussing the finding of a \$900 million treasure found off of the coast of Puerto Rico).

some point in history somewhere around the Island.⁶ Hurricanes, maritime battles and pirate attacks⁷ helped the sea acquire some of these riches and have concealed them at the bottom of the ocean.⁸ The finding of these treasures in recent years gave the local court the opportunity to rule on the power and the rights of the State over them. The overlooking of specific statutes by the courts propelled the belief of an insufficiency of local laws on the matter. This deficiency of applicable legal remedies has caused the development of special legislation to govern any archeological finding within the jurisdictional waters of Puerto Rico. A decade and a half ago, the highest court of the Island, in its leading case, *López v. Fitzgerald*⁹ (hereafter *López I*) ruled, applying a law from Spain, that Puerto Rico has, in the absence of a claim by the original owner, an absolute ownership of anything found off of its coast. In its decision, the court also gave the discoverers an open window to go back to the Court of First Instance and claim a compensation for their work of removing the items from the sea. Five years later, in *López v. Fitzgerald*¹⁰ (hereafter *López II*) the Court of Appeals reviewed a reimbursement suit from the lower court and held that the appellants were rightfully given a fair compensation of one third of their finding under the application of another Spanish law.

⁶ See Ricardo Cortés Chico, *Anclada la historia en el fondo del mar*, EL NUEVO DÍA, Sep. 17, 2006, at 1, available at ANENDI.COM, File No. 32935 (conversing about how the Island of Puerto Rico is surrounded by thousands of shipwrecks that are time capsules); José Javier Pérez, *Lleno el mar de historias de oro*, EL NUEVO DÍA, Nov. 19, 1997, at 1, available at ANENDI.COM, File No. 313348 (discussing the existence of more than 400 shipwrecks around Puerto Rico); Asunción Cantres Correa, *Remueven los restos de 2 embarcaciones*, EL NUEVO DÍA, July 4, 2001, at 1, available at ANENDI.COM, File No. 459647 (discussing the discovery of two Spanish vessels at San Juan Bay). Ricardo Cortés Chico, *En defensa de la escuela de buceo*, EL NUEVO DÍA, Sept. 2, 2006, at 1, available at ANENDI.COM, File No. 37917 (discussing the finding of two ships of Sir Francis Drake's fleet).

⁷ See LEE COOPER, THE PIRATE OF PUERTO RICO (Putnam Pub Group 1972) (in reference to pirates of Puerto Rican descent). See also CRUZ APESTEGUI, PIRATAS EN EL CARIBE: CORSARIOS, FILIBUSTEROS Y BUCANEROS, 1493-1700 (Lunweg Editores 2006); ANGUS KONSTAM, THE HISTORY OF PIRATES (The Lyons Press 2002) (1999); Ricardo Cortés Chico, *Vivas las leyendas de fantasmas y tesoros*, EL NUEVO DÍA, Sep. 3, 2006, at 1, available at ANENDI.COM, File No. 38120 (discussing pirate and treasure stories of Puerto Rico).

⁸ See WALTER A. CARDONA BONET, SHIPWRECKS IN PUERTO RICO'S HISTORY (W.A. Cardona Bonet 1989).

⁹ *López Soba v. Richard Fitzgerald (Lopez I)*, 130 P.R. Dec. 46 (1992), dismissed, 866 F.2d 16 (1st Cir. 1989). See Luis F. González Correa, *Derecho Mercantil*, 62 Rev. Jur. U.P.R. 767, 771-773 (1993) (discussing *Lopez I*, 130 P.R. Dec. 46 (1992) and *Lopez II*, 1997 A.M.C. 2254 (P.R. Cir. 1996)).

¹⁰ *López Soba v. Richard Fitzgerald (Lopez II)*, 1997 A.M.C. 2254 (P.R. Cir. 1996).

As we agree with the title of the State over abandoned shipwrecks off of its coast, it is not from the Spanish Harbor Act of 1880¹¹ (hereafter *Harbor Act of 1880* or *Act of 1880*), the Protection, Conservation and Study of the Underwater Archaeological Sites and Resources Act¹² (hereafter *Protection Act*) nor the Abandoned Shipwreck Act of 1987¹³ (hereafter *ASA*) that the government rights come from but from the applicability of the Puerto Rican Federal Relations Act,¹⁴ popularly known as the *Jones Act*, the subsequent enforcement of the Constitution of the Commonwealth of Puerto Rico¹⁵ and local statutes. The award of one third is not consonant with Article 285 of the Island Civil Code¹⁶ (hereafter *Article 285*) and is not viable under the *Jones Act*; moreover, it is unfeasible under the basic principles of salvage service established by the United States Supreme Court in *The Blackwall*¹⁷ (hereafter *Blackwall*) and others¹⁸ and used as guidelines in the *Protection Act*. Notwithstanding, at the time the facts of these two cases took place, the current *Protection Act* and the *ASA* were not in effect. To this extent, the Supreme Court as well as the Court of Appeal averred that their ruling will not have differed much if both acts were applicable when they heard the cases. In *Lopez I*, the court upheld the application of the Spanish law because the artifacts taken from the shipwreck were on submerged land and therefore the dispositions of the Civil Code¹⁹ were not applicable. Furthermore, in *Lopez II*, the

¹¹ §5 of the Harbor Act (R.D.-Ley 1880) (cited in *Lopez I*, 130 P.R. Dec. at 54).

¹² P.R. LAWS ANN. tit. 18, § 1501 (1987).

¹³ The Abandoned Shipwreck Act of 1987, 43 U.S.C.A §§2101-2106 (West 2008).

¹⁴ Puerto Rican Federal Relations Act, 48 U.S.C.A §§731-916 (West 2008).

¹⁵ P.R. CONST. art. I.

¹⁶ P.R. LAWS ANN. tit. 31, § 1116 (1930).

¹⁷ *The Blackwall*, 77 U.S. 1 (1869).

¹⁸ See *Mason v. Ship Blaireau*, 6 U.S. 240 (1804); *Cromwell v. The Bark Island City*, 66 U.S. 121 (1861); *The Sanibe*, 101 U.S. 384 (1879). See also *The Henry Ewbank*, 11 F.Cas. 1166, (C.C.Mass. 1833); *The Dawn*, 7 F.Cas. 204, (D.C.Me. 1841); *The Massasoit*, 16 F.Cas. 1070 (D.C.Mass. 1844); *Lancaster v. Smith*, 330 F. Supp. 65, 67 (S.D.Ala. 1971); *Platoro Ltd. v. The Unidentified Remains of a Vessel*, 695 F.2d 893 (5th Cir. 1983).

¹⁹ The reader must remember that there are great differences between the civil law and the common law traditions. The rule of precedent and legal authorities as well as the role of the judges differ and are not based on the same history or legal foundations as the common law. See JOHN HENRY MERRYMAN, *THE CIVIL LAW Tradition* 34-47 (Stanford Univ. Press 1985) (1969). In the civil tradition, “the judge is assigned a comparatively minor, inglorious

court affirmed the award of one third as just and avowed that such compensation was within the amount permitted by an analogous application of the *Protection Act* and *Article 285*. In both instances, the courts searched for a Spanish Act not applicable to the Island and obliterate the current rule of law.

As we look at the analysis, it is crucial to mention that the *ASA* only confirms and makes more official what the provisions in 1917 from the *Jones Act* had already established. It is imperl, that even though the shipwrecks were found within the jurisdiction of Puerto Rico, to revise the international norms of Salvage Law and the Law of Finds since they were the doctrines used by the U.S. Supreme Court in its landmark cases during the 19th century. The award amount given in *Lopez II* does not abide by the current local law and principles of a reasonable, fair and persuasive compensation found in hundred of years of International Maritime Law set forth by United States Supreme Court jurisprudence. The interpretation of a foreign statute to deny a citizen of his constitutional right of equal protection of the laws²⁰ is to deprive the Puerto Rican people of its identity.

II: *LOPEZ I*: CLAIM OF OWNERSHIP BY THE STATE

After the Spanish-American War²¹ ended on August of 1898 with the signing of the Treaty of Paris,²² Puerto Rico was ceded to the United States from the Spanish Crown.²³ As a

role a mere operator of a machine designed and built by scholars and legislators.” *Id.* at 47. The Civil Code extinguishes the interpretative role of the court; a previous analysis by a judge does not oblige a future judge.

²⁰ P.R. CONST. art. II § 7.

²¹ The Spanish-American War took place in 1898 and lasted for 109 days. At the end of the war, the United States had gained ownership over almost all colonies of Spain: Puerto Rico, Philippines and Guam. The island of Cuba was taken by United States but was allowed to declare their independence on May, 20 1902. Puerto Rico was invaded through the municipally of Guánica. After some minor battles, it was finally taken on July 25, 1898. *See* BRAD K. BERNER, *THE SPANISH-AMERICAN WAR* (The Scarecrow Press, Inc. 1998). *See also* KERRY A. GRAVES, *THE SPANISH-AMERICAN WAR: AMERICA GOES TO WAR* (Capstone Press 2000).

²² Hostilities ended on August 12, 1898. The peace treaty was signed in Paris on December 10, 1898, came into effect on February 6, 1899 and came into force on April 11, 1899. *See* WILLIAM A JOHNSTON, *HISTORY UP TO DATE: A CONCISE ACCOUNT OF THE WAR OF 1898 BETWEEN THE UNITED STATES AND SPAIN, ITS CAUSES AND THE TREATY OF PARIS* (A. S. Barnes 1899). To read the treaty: *See* Treaty of Peace Between the United States and Spain;

result, the Island was under military rule until Congress enacted the Organic Act of 1900.²⁴ Also known as the *Foraker Act*, the new law established a local government with limited powers.²⁵ In 1917, Congress passed the *Jones Act*²⁶ which placed under the control of the local government all bodies of water and submerged lands underlying the same in and around the island. It gave Puerto Rico original jurisdiction over submerged lands in and around it and the adjacent islands²⁷ extending from the coastline “as heretofore or hereafter modified by accretion,²⁸ erosion,²⁹ or reliction,³⁰ seaward to a distance of three marine leagues.”³¹ The *Jones Act* transferred ownership and power over these underwater lands from the government of the United States to the Puerto Rican People.

As the owner of public lands, the State also enjoys a successor right over abandoned, unclaimed property and real estate. This principle is established by the Island’s Constitution in

December 10, 1898, <http://www.yale.edu/lawweb/avalon/diplomacy/spain/sp1898.htm> (last visited April 12, 2008) (taken from U.S. Congress, 55th Cong., 3d sess., Senate Doc. No. 62, Part 1). See BLACK’S LAW DICTIONARY 1540 (8th ed. 2004) where peace treaty is defined as “[a] treaty signed by heads of state to end a war.”

²³ During the time of the Spanish-American War, the Kingdom of Spain was ruled by Queen María Christina, regent to her son Alfonso XIII. The regency lasted from 1886 to 1902, when the young King turned 16. See Spain Constitution of 1978 Title II, arts. 56-65 (the constitution institutes the political form of government as Parliamentary Monarchy). See Official site of the Royal Household of His Majesty the King, <http://www.casareal.es/laCorona/laCorona-iden-idweb.html> (last visited April 12, 2008); *Condominio del Mar v. ELA*, No. KLAN020024 3, 2004 WL 1565346 *15 n.10 (P.R. T.C.A Mar 23, 2004) (discussing that all property belonging to the Spain Crown was yielded to the United States with the signing of the Paris Treaty).

²⁴ Organic Act of 1900, ch. 191, 31 Stat. 77 (1900) (codified as amended at 48 U.S.C. §§731-916 (1999)). See <http://www.lexjuris.com/LEXLEX/lexotras/lexleyforaker.htm> (last visited April 14, 2008) (act text in Spanish).

²⁵ The act instituted a civilian government. It established a governor and an executive council appointed by the President, a House of Representatives with 35 elected members, a judicial system with a Supreme Court, and a non-voting Resident Commissioner in Congress. See *Id.*

²⁶ Puerto Rican Federal Relations Act, 48 U.S.C.A §§731-916 (West 2008).

²⁷ Some of Puerto Rico adjacent islands include: Vieques, Culebra, Culebrita, Palomino, Mona, Monito and various others isolated islands. See DON PHILPOTT, LANDMARK PUERTO RICO (LANDMARK VISITORS GUIDES) 52 (Landmark Publishing 2003).

²⁸ BLACK’S LAW DICTIONARY 22 (8th ed. 2004). It is defined as “[t]he gradual accumulation of land by natural forces, esp. as alluvium is added to land situated on the bank of a river or on the seashore.” See BOUVIER’S LAW DICTIONARY 111, vol. 1 (8th ed. 1984).

²⁹ *Id.* at 582. It is defined as “[t]he wearing away of something by action of the elements; esp., the gradual eating away of soil by the operation of currents or tides.” See BOUVIER’S, *supra* note 28 at 1068 vol. 1.

³⁰ *Id.* at 1317. It is defined as “[a] process by which a river or stream shifts its location, causing the recession of water from its bank. [] The alteration of a boundary line because of the gradual removal of land by a river or stream.” See BOUVIER’S, *supra* note 28 at 2065 vol. 3.

³¹ 48 U.S.C.A § 749.

Article IX which expresses that “[t]he Commonwealth of Puerto Rico shall be the successor of the People of Puerto Rico for all purposes including, without limitation, the collection and payments of debts and liabilities in accordance with their terms.”³² Furthermore, Article 912 of the Civil Code³³ provides that “[i]n default of persons who have the right to inherit in accordance with the preceding subchapters, the Commonwealth of Puerto Rico shall take the inheritance and devote the property to the benefit of the University Fund.”³⁴ There is no ambiguity on the proprietorship of the State³⁵ over any tangibles whose original owner is unknown, when there is no rightful heir to claim it or the right to inherit *ab intestate*³⁶ has extended beyond the sixth degree of relationship as stipulated on Article 911.³⁷

Hidden treasures are first mentioned under Puerto Rico law in *Article 285*. It especially sets out that “[h]idden treasures belong to the owner of the land on which they are found.”³⁸ The norm is expanded by Article 554,³⁹ in which the person finding the hidden treasure on another's property simply by chance should have rights over it granted to him.⁴⁰ This right translates by statute to one-half of the things found, as the aforementioned *Article 285* provides that “one-half thereof shall be allowed to the finder.”⁴¹ The compensation is subject to the fact that the

³² P.R. CONST. art. IX § 4.

³³ P.R. LAWS ANN. tit. 31, § 2691 (1930).

³⁴ *Id.*

³⁵ See *Ex Parte U.S.*, 105 P.R. Dec. 920 (1977) (Chief Justice Trias Monge delivered the opinion of the Supreme Court of Puerto Rico ruling that “[a] favorable money balance under judicial custody at the time of a disabled veteran's death, created by pensions paid to him by the Veterans Administration--amount which was inherited by his daughter who, at her death, left no ascendants, descendants, spouse or collateral within the sixth degree of consanguinity--belongs to the Commonwealth of Puerto Rico, and not to the United States of America”).

³⁶ BLACK'S *supra* note 28 at 804. *Intestate* is defined as “[o]f or relating to a person who has died without a valid will.” See BOUVIER'S, *supra* note 28 at 1679, vol. 2.

³⁷ P.R. LAWS ANN. tit. 31, § 2679 (1930).

³⁸ P.R. LAWS ANN. tit. 31, § 1116 (1930).

³⁹ P.R. LAWS ANN. tit. 31, § 1955 (1930).

⁴⁰ *Id.*

⁴¹ tit. 31, § 1116 (1930). See also BOUVIER'S, *supra* note 28 at 3311 vol. 3. It explains that in Civil Law “when the treasure was found by the owner of the soil he was considered as entitled to it by the double title of owner and finder; when found on another's property, one half belonged to the owner of the estate and the other to the finder; when found on public property, it belonged one half to the public treasury and the other to the finder.”

discovery of the treasure is as a result of an unprovoked or unplanned searched. Although, if the owner of the land allows for an exploration, then the statutory mandate for one-half does not oblige; however, the finder may be rewarded up to one-half.⁴² For a finding to be declared as a treasure, it must meet the statutory description provided by law. The Civil Code defines it as “any hidden or unknown deposit of money, jewelry, or other precious objects, the lawful ownership of which is not proven.”⁴³ Article 550⁴⁴ ascertains that hidden treasure and abandoned property are acquired by possession since they can be “appropriated by reason of their nature.”⁴⁵ Nevertheless, none of the said statutory clauses deal with the probability of a discovery been made in a land covered by a body of water. Article 557⁴⁶ strives to give some light to the question by providing that “[t]he rights to goods jettisoned, or to those cast ashore by the waves, whatever their nature may be, or to plants and herbs growing on the seashore, are fixed by special laws.”⁴⁷ The article only asserts for special laws to be applicable solely when whatever found are cast ashore by the waves and not when the findings are hand picked at a specific place under water.

Prior to the creation of the *Protection Act* in 1987, there was an uncertainty on what special laws Article 557⁴⁸ referred to. In *Lopez I*, the Supreme Court was able, for the first time, to rule on the matter. Delivering the opinion of the court, Justice Hernández Denton held that,

⁴² P.R. Attorney General Opinion Num. 72 of 1962 (cited in tit. 31, § 1116 (1930)).

⁴³ P.R. LAWS ANN. tit. 31, § 1117 (1930). When interpreting the definition of treasure given by the Civil Code the courts may look at the one given by the Royal Academy of the Spanish Language, as it is defined as “an amount of money, values or precious objects put together and kept away.” ROYAL ACADEMY OF THE SPANISH LANGUAGE DICTIONARY 2166 (22nd ed. 2001). See Black’s, *supra* note 28 at 1539 as it is defined as “[v]aluable (usu. gold or silver) found hidden in the ground or other private place, the owner of which is unknown.” In Civil Law, treasure trove includes “not only gold and silver, but whatever may constitute riches: as vases, urns, statues, etc.” BOUVIER’S, *supra* note 28 at 3311 vol. 3.

⁴⁴ P.R. LAWS ANN. tit. 31, § 1951 (1930) (the statute provides that “[t]hings are acquired by occupancy which can be appropriated by reason of their nature, which have no owners, such as animals which are the object of hunting and fishing, hidden treasure, and abandoned property”).

⁴⁵ *Id.*

⁴⁶ P.R. LAWS ANN. tit. 31, § 1958 (1930).

⁴⁷ *Id.*

⁴⁸ tit. 31, § 1958 (1930).

despite the change of sovereignty in 1898, the *Harbor Act of 1880*,⁴⁹ extended to Puerto Rico by Royal Decree of 1886, was still in force.⁵⁰ The *Act of 1880* stated that “[a]ll that is cast ashore by the waves and has no known owner belongs to the State.”⁵¹ Moreover, in relation of reimbursement liability for the finders, it asserted that the State “shall be liable for the claims of third persons, and shall pay the fees and rewards for finds and salvage pursuant to applicable statutes and regulations.”⁵² In its reasoning, the court argued that under its ruling in *Caraballo*,⁵³ a subsequent legislation that does not have an express repealing clause nor has sections in conflict or inconsistent with the latter, leaves in force all provisions of the previous Act.⁵⁴ As a result, neither the following *Regulation and Government of the Docks and Harbors of Porto Rico of 1906*⁵⁵ nor the *Dock and Harbor Law of Porto Rico of 1928*⁵⁶ or the revised *Dock and Harbor Act of Puerto Rico of 1968*⁵⁷ revoked the *Harbor Act of 1880*. It was the opinion of the Court that it was through the *Act of 1880* that the State acquired ownership.

Notwithstanding the opinion, *Lopez I* emphasized that for incidents after August 7, 1987, the *Harbor Act of 1880* will not be applicable. Under constitutional mandate,⁵⁸ the Puerto Rico Legislature passed the *Protection Act* which provides that the State: “has the dominion of the waters under its jurisdiction and the lands submerged under them and, therefore, has the dominion and the right to administer and dispose of all the underwater archaeological sites and

⁴⁹ §5 of the Harbor Act (R.D.-Ley 1880).

⁵⁰ *Lopez I*, 130 P.R. Dec. at 57.

⁵¹ *Id.* at 61.

⁵² *Id.*

⁵³ *Ex parte Caraballo*, 9 P.R. Dec. 326 (1905) (cited in *Lopez I*, 130 P.R. Dec. at 62).

⁵⁴ *Id.* at 300 (the court ruled that “[a]n act of the Legislature containing a clause repealing all acts or parts of acts inconsistent with its provisions, but not repealing by name the previous act on the same subject matter, leaves in force all provisions of the previous act that are not in conflict with its provisions”).

⁵⁵ Law of July 14, 1906, 1907 P.R. Laws page 47 (repealed 1928) (cited in *Lopez I*, 130 P.R. Dec. at 61).

⁵⁶ 1928 P.R. Laws page 425, amended by 1968 P.R. Laws page 481 (cited in *Lopez I*, 130 P.R. Dec. at 62).

⁵⁷ PR. LAWS ANN. tit. 23, §§ 2110-2801 (1968).

⁵⁸ P.R. CONST. art. VI § 19 (“[i]t shall be the public policy of the Commonwealth [...] to conserve and maintain buildings and places declared by the Legislative Assembly to be of historic or artistic value”). See PR. LAWS ANN. tit. 31, § 1503 (1987).

resources that lie in these waters and their submerged lands.”⁵⁹ As a direct effect, the Island now holds ownership of what is found off its coast and administrative power over private property that is considered archeological by an explicit statutory clause. Furthermore, in 1988, the United States Congress enacted the *ASA*,⁶⁰ in which the federal government asserted title to any abandoned shipwreck and transferred the ownership of it to the State on whose submerged lands the shipwreck is located.⁶¹ Hence, Puerto Rico is the sole proprietor by federal law, in absence of an original owner or a legal heir, of anything found within three nautical miles off its coast.⁶²

III. THE ABANDONED SHIPWRECK ACT OF 1987 AND THE PROTECTION, CONSERVATION AND STUDY OF THE UNDERWATER ARCHAEOLOGICAL SITES AND RESOURCES ACT: APPLICATION AND PURPOSE

Under a public policy of protecting the cultural heritage of Puerto Rico, the legislative branch of the Island enacted in 1987 the *Protection Act*. The law ratified the principle established by the *Jones Act* and proclaimed that the State had the authority of all submerged lands under its jurisdiction.⁶³ It also asserted that the Commonwealth had the “dominion and the right to administer and dispose of all the underwater archaeological sites and resources that lie in these waters and their submerged lands.”⁶⁴ The act declared all underwater archaeological sites as public interest⁶⁵ and appointed the Institute of Puerto Rican Culture⁶⁶ to administer their welfare and conservation. It created regulations for anyone interested in the investigation, study, exploration, excavation, recovery or salvage of an underwater archaeological location.⁶⁷ The new

⁵⁹ PR. LAWS ANN. tit. 31, § 1504 (1987).

⁶⁰ The Abandoned Shipwreck Act of 1987, 43 U.S.C.A §§2101-2106 (West 2008).

⁶¹ *Id.* at §2105(a) and at §2105(c).

⁶² BLACK’S, *supra* note 28 at 1056. It is defined as “[a] measure of distance for air and sea navigation, equal to one minute of arc of a great circle of the earth.” A nautical mile is 1.15 mile; three nautical miles equal to 3.45 miles.

⁶³ P.R. LAWS ANN. tit. 18, § 1504 (1987).

⁶⁴ *Id.*

⁶⁵ P.R. LAWS ANN. tit. 18, §1505 (1987).

⁶⁶ P.R. LAWS ANN. tit. 18, §§ 1195-1204(h) (1955).

⁶⁷ P.R. LAWS ANN. tit. 18, § 1509 (1987).

policy required the obligation of obtaining a permit⁶⁸ and the commitment of the petitioners to ensure the protection of the natural environment by using the most advanced techniques in science and technology.⁶⁹ The *Protection Act* did not give dominion to the State over the submerged lands; this power was granted by the *Jones Act* back in 1917. Nonetheless, the declaration of these terrains that contained archaeological artifacts as places of public interest gave the State the constitutional authority to administer and protect them for the present and future of the Puerto Rican People.

In the United States, the increase number of shipwrecks findings⁷⁰ impelled Congress to enact the *ASA*. In hopes to create a uniform system to guard the underwater archeology, the law eradicated the application of Salvage Law and the Law of Finds to abandoned wrecks located in U.S. territorial waters.⁷¹ In order to accomplish this, the federal government acquires ownership of any shipwreck⁷² “embedded in submerged lands of a State”⁷³ or “embedded in coralline

⁶⁸ *Id.*

⁶⁹ P.R. LAWS ANN. tit. 18, §1503 (1987).

⁷⁰ See Irvin Molotsky, *Bill to Protect Historic Shipwrecks Goes to Reagan*, NY TIMES, April 14, 1998, <http://query.nytimes.com/gst/fullpage.html?res=940DE5DC103CF937A25757C0A96E948260&scp=10&sq=shipwrecks&st=nyt> (last visited April 12, 2008); *Spain Seeks to Revoke Rights to 2 Shipwrecks*, NY TIMES, Dec. 25, 1998, <http://query.nytimes.com/gst/fullpage.html?res=9B03E7DB1F3CF936A15751C1A96E958260&scp=2&sq=shipwrecks&st=nyt> (last visited April 12, 2008); *In Search of Shipwrecks, Sometimes Lobsters*, NY TIMES, Sept. 1, 1996, <http://query.nytimes.com/gst/fullpage.html?res=9C0CE4DF1E39F932A3575AC0A960958260&scp=26&sq=shipwrecks&st=nyt> (last visited April 13, 2008); *US shipwreck could yield millions*, Aug. 18, 2003, BBC NEWS, <http://news.bbc.co.uk/2/hi/americas/3158629.stm> (last visited April 12, 2008); Dean Irvine, *Plundering the oceans: Who rules the waves?*, CNN.COM, Oct. 19, 2007, <http://edition.cnn.com/2007/WORLD/europe/10/19/ww.treasurehunters/index.html> (last visited April 14, 2008). See also STEVEN D. SINGER, SHIPWRECKS OF FLORIDA: A COMPREHENSIVE LISTING (Pineapple Pr 1998) (1992); DAVID STICK AND FRANK STICK, GRAVEYARD OF THE ATLANTIC: SHIPWRECKS OF THE NORTH CAROLINA COAST (University of North Carolina Press 1985) (1952); WILLIAM RATIGAN, GREAT LAKES SHIPWRECKS & SURVIVALS (Wm. B. Eerdmans Publishing Company June 1960).

⁷¹ The Abandoned Shipwreck Act of 1987, 43 U.S.C.A §2106(a) (West 2008) (“[t]he law of salvage and the law of finds shall not apply to abandoned shipwrecks to which section 2105 of this title applies”).

⁷² *Id.* at §2102(d). As defined by the act, “the term ‘shipwreck’ means a vessel or wreck, its cargo, and other contents. See Black’s, *supra* note 28 at 1411. Here it is defined as “[a] ship’s wreckage”; also as “[t]he injury or destruction of a vessel because of circumstances beyond the owner’s control, rendering the vessel incapable of carrying out its mission.” There are two types of wrecks: “1. When the vessel sinks or is dashed to pieces; 2. When she is stranded, which is, when she grounds and fills with water.” See *Id.* (citing 4 James Kent, *Commentaries on American Law* 323 n. (b) (George Comstock ed., 11th ed. 1866)).

⁷³ *Id.* at §2105(a)(1)(2).

formations protected by a State on submerged lands or a State.”⁷⁴ The law also provided for the transfer of the title⁷⁵ to the State or territory “on whose submerged lands the shipwreck is located.”⁷⁶ Once this was done, the Act requires the States’ government to guarantee both recreational exploration and sector recovery⁷⁷ in accordance with protecting the historical value of the wreck. *ASA* unmistakably held the validity of the *Jones Act* by expressing that the meaning of the submerged lands applicable to Puerto Rico is described on section eight of such Act.⁷⁸ In addition, Congress made clear that the law will only apply to shipwrecks that have been deserted and the owner has renounced all proprietary rights over it.⁷⁹

ASA provides for funds to be granted to States that meet the minimum requirements set by the National Historic Preservation Act⁸⁰ for the study, interpretation, protection, and preservation of historic shipwrecks and properties.⁸¹ Each State has been given the opportunity to enact acts and regulations that best fit their view of archeology conservation. States have passed laws to that effect; ironically, the extensive legislation has caused great incongruity all over the

⁷⁴ *Id.* at §2105(a)(3) (“[t]he United States asserts title to any abandoned shipwreck that is: (3) on submerged lands of a State and is included in or determined to be eligible for inclusion in the National Register”).

⁷⁵ *Id.* at §2105(d). As an exception to the acquisition of title of subsection (a)(1)(2), the act provides for “[a]ny abandoned shipwreck in or on public lands of the United States is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands.” *Id.*

⁷⁶ *Id.* at §2105(c).

⁷⁷ *Id.* at §2103(a). Subsection (b) the act requires States of the Union to “guarantee recreational exploration of shipwreck sites;” and under (c) to “allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites”. *Id.* See also *Sea Hunt, Inc. v. The Unidentified Shipwrecked Vessel or Vessels*, 221 F.3d 634, 640 (4th Cir. 2000) (explaining the applicability of *ASA* and emphasizing that for a State of the Union to acquired jurisdiction “to a shipwreck it must be (1) abandoned and (2) on or embedded in the submerged lands of a state”).

⁷⁸ *Id.* at §2102(f)(2).

⁷⁹ *Id.* at §2101(b). Military wrecks are considered not to be abandoned regardless of time passed or their location. As general rule, the United States retains ownership of all wrecks of its lost vessels and planes. The government can prohibit salvage efforts even if rejecting salvage services would not be prudent or it if had not made alternative plans to recover the wreck. The possibility of a corrosive environment and a slowly disintegration of the wreck do not eliminate the State’s absolute right. See *International Aircraft Recovery v. Unidentified, Wrecked and Abandoned Aircraft*, 218 F3d 1255, 1260-61 (11th Cir. 2000) (a bomber plane of WWII crashed on international waters). See also David J. Bederman, *Current Development: Congress Enacts Increased Protections for Sunken Military Craft*, 100 A.J.I.L. 649 (2006) (discussing the definition of the Sunken Military Craft Act and the need for a clarification).

⁸⁰ National Historic Preservation Act, 16 U.S.C. §§ 470-470(1) (1980).

⁸¹ The Abandoned Shipwreck Act of 1987, 43 U.S.C.A §2103(b) (West 2008).

nation. Now there are endless ways to deal with the interests and rights of archeologists and salvors.⁸² States have restricted the time a search can be conducted, imposed fees and the need of acquiring licenses and permits.⁸³ The State of Louisiana, for example, only authorizes scientific ventures and allows solely *quantum meruit* compensation.⁸⁴ Ohio took a different approach and prohibited salvors to conduct salvage operations.⁸⁵ In the case of Puerto Rico, *ASA* theoretically took from the Island the power granted over submerged lands by the *Jones Act* and returned them back to the federal government. Nonetheless, the fact that *ASA* kept the definition established by the *Jones Act* for these lands and that once it acquired title over the abandoned shipwrecks, they are transfer back to Puerto Rico, it can be averred that such appropriation never took place and the *Jones Act* was not amended by default.

IV. LAW OF SALVAGE AND LAW OF FINDS DISTINCTION AND ITS APPLICATION. DOCTRINES ELIMINATED FROM OUR JUDICIAL SYSTEM

The Law of the Sea⁸⁶ is made of international maritime customs, treaties⁸⁷ and norms from the Salvage Law⁸⁸ and Law of Finds.⁸⁹ As a general rule, Salvage Law presumes that

⁸² See Joseph C. Sweeney, *An Overview of Commercial Salvage Principles in the Context of Marine Archaeology*, 30 J. MAR. L. & COM. 185, 199-203 (1999) (“[t]he 30 coastal states have responded to the treasure salvage problem in various non-uniform and haphazard ways, despite the expectation that the States would willingly adopt the solutions proposed in the National Park Service’s Abandoned Shipwreck Guidelines”).

⁸³ Christopher R. Bryant, *The Archaeological Duty of Care: The Legal, Professional, and Cultural, Struggle over Salvaging Historic Shipwrecks*, 65 ALBANY L. J. 97, 131, 127, n. 183 (2001) (discussing the fact that “[s]ome States have responded to this requirement by creating a licensing system whereby salvors are able to perform salvage and recovery services under the purview of State control”).

⁸⁴ Sabrina L. McLaughlin, *Roots, Relics and Recovery: What Went Wrong with the Abandoned Shipwreck Act of 1987*, 19 COLUM.-VLA J.L. & ARTS 149, 194-95 (1995) (discussing the issue that “[m]any States are unable to adopt the NPS [National Park Services] suggestions. State laws regularly fail to provide for expansive agency authority. Without express authority from the legislature, a shipwreck agency cannot implement the guidelines.”). See Bryant, *supra* note 82 at 127, n. 185.

⁸⁵ *Id.*

⁸⁶ See BLACK’S, *supra* note 28 at 877. Law of the Sea is defined as “[t]he body of laws, taken to be common to all civilized peoples, and applied in dealing with the relations between Roman citizens and foreigners.” Moreover, the Law of the Sea, also known as Maritime Law, is defined as the “[t]he body of international law governing how nations use and control the sea and its resources”. *Id.* at 904. See also Anastasia Strati, *The Protection of the Underwater Cultural Heritage: An Emerging Objective of the Contemporary Law of the Sea*, 23 PUBLICATIONS ON OCEAN DEVELOPMENT 7, 44 (Martinus Nijhoff Publishers 1995); R. R. CHURCHILL AND A. V. LOWER, *THE LAW OF THE SEA* (Juris Publishing, Inc. 3ed 1999).

salved property has an owner and he has never abandoned it. It is intended to “encourage persons to render prompt, voluntary, and effective service to ships at peril or in distress by assuring them compensation and reward for their salvage efforts.”⁹⁰ The Law of Finds, on the contrary, assumes that the property has been abandoned and the finder acquires a right of ownership to his findings. Since an action under such doctrine dispossess the true owner of his property right, Maritime jurisprudence has come to the conclusion that Salvage Law is favored over the application of the Law of Finds.⁹¹ Nevertheless, when long-lost shipwrecks are found in international waters and the *rem*⁹² is subject to adjudication, the Law of Finds is preferred and most often applied.⁹³ The circumstances call for the application of the doctrine of *animus revertendi*,⁹⁴ where the owner is nowhere to be found or, in the case of earlier period empires or historic nations, has no desire or cannot legally present a claim of proprietorship.⁹⁵

⁸⁷ See *Mayagüezanos por la salud y el ambiente v. United States*, 38 F. Supp. 2d 168,175 (P.R. Cir.) (here the court observed that “UNCLOS III contains ‘customary international law’ that the United States is bound to observe, regardless of whether it ratifies UNCLOS III”; the “United States is bound to the purpose and principles of UNCLOS III.”); Ved P. Nanda and David K. Pansius, *Unratified Treaties*, 2 LITIGATION OF INTERNATIONAL DISPUTES IN U.S. COURTS, LOID § 10:11 (2007). See also Eke Boesten, *ARCHAEOLOGICAL AND/OR HISTORIC VALUABLE SHIPWRECKS IN INTERNATIONAL WATERS: PUBLIC INTERNATIONAL LAW AND WHAT IT OFFERS* 16 n. 27 (T.M.C. Asser Press 2002).

⁸⁸ See 68 AM. JUR. 2D *Salvage* § 3 (2008). Under Salvage Law the finder, after a successful recovery and possession of lost property from the oceans and waterways, is entitled only to a salvage award. See *Bemis v. RMS Lusitania*, 884 F. Supp. 1042 (E.D. Va. 1995); *MDM Salvage, Inc. v. Unidentified, Wrecked and Abandoned Sailing Vessel*, 631 F. Supp. 308 (S.D. Fla. 1986). See Jason Parent, *No Duty to Save Lives, No Reward for Rescue: Is that Truly the Current State of International Salvage Law?* 12 Ann. Surv. Int'l & Comp. L. 87, 89-90, 100-108 (2006) (discussing the birth of salvage law in general and the American salvage law).

⁸⁹ See *Id.* Under the Law of Finds the finder of the shipwreck gains title of what he finds. See also *Marex Intern. v. Unidentified, Wrecked and Abandoned Vessel*, 952 F. Supp. 825 (S.D. Ga. 1997).

⁹⁰ *R.M.S. Titanic v. Haver (Titanic I)*, 171 F.3d 943, 962 (4th Cir. 1999). See *The Akaba v. Burg Boston Towboat*, 54 F. 197 (4th Cir. 1893) (here the court ruled that, in this specific case where “the rescuing vessel lost her regular return trip, and her cargo of vegetables and fruit perished from the delay”, an “award of \$30,000 salvage was not so excessive as to be disturbed on appeal”). See also *Columbus-America v. Atlantic Mut. Ins.*, 974 F.2d 450, 459-60 (4th Cir. 1992).

⁹¹ *Falgout Brothers v. S/V Pangaea*, 966 F.Supp. 1143, 1145 (S.D.Ala 1998).

⁹² In general terms, the concept is defined as “a thing.” BLACK’S, *supra* note 28 at 809. Here the term is defined as “[i]nvolving or determining the status of thing.” See BOUVIER’S, *supra* note 28 at 1524 vol. 2.

⁹³ *Titanic I*, 171 F.3d at 962.

⁹⁴ IGNACIO RIVERA-GARCÍA, *DICCIONARIO DE TÉRMINOS JURÍDICOS* 363 (Lexis-Nexis 3th ed. 2000) (“[t]he intention to return something”).

⁹⁵ This is the case of many accident countries and empires that have disappeared and there is no government or minority group with legal rights to claim ownership over artifacts found. Ancient shipwrecks from this historical

Federal courts have concluded that the application of Salvage Law “better serves the needs of maritime commerce by encouraging the saving of property for the benefit of its owner rather than the secretive discovery of property in an effort to deprive the owner of title.”⁹⁶ It has been held that the preference over the Law of Finds is because salvage services have existed “as an important part of the general maritime law of nations as long as there has been navigation.”⁹⁷ This concept, as reaffirmed by the Fifth District in *Margate Shipping Co. v. M/V JA Orgeron*,⁹⁸ “has been an integral part of maritime commerce in the western world since it was civilized.”⁹⁹ The Forth District in *R.M.S. Titanic, Inc. v. Haver*¹⁰⁰ (hereafter *Titanic I*) observed that in the application of one doctrine over the other “courts of admiralty apply one to the exclusion of the other, as appropriate, to resolve claims in property discovered and recovered in navigable waters by those other than the property's owners or those taking through them.”¹⁰¹ Nonetheless, the right of property,¹⁰² as an international recognized privilege,¹⁰³ and the application of the Law of Finds will contravene with the fundamental principles of such right.

civilization have no owner and therefore, are abandoned on the presumption of the law. Some of this societies include the Indus Valley (Indus Valley of Pakistan and India); Persian Empire (Asia as far as the Indus River, Greece, and North Africa including what is now Egypt and Libya); Minoan Culture (islands in the Aegean Sea); Etruscan Civilization (in the Etruria region of Italy); Caral-Supe Civilization (the Supe Valley of Perú); Olmec Civilization (Central American); Moche Civilization (the coast of what is now Perú); Hittite Empire (roughly what today is Turkey). See K. Kris Hirst, *Top 8 Top Unknown Ancient Empires*, ABOUT.COM: ARCHEOLOGY, http://archaeology.about.com/od/ancientcivilizations/tpunknown_c_iv.htm (last visited April. 15, 2008).

⁹⁶ *Titanic I*, 171 F.3d at 961. See *Columbus-America*, 974 F.2d at 464; *Hener v. U.S.*, 525 F.Supp. 350, 354 (D.C.N.Y. 1981) (the court in *Hener* expresses that “salvage law assumes that the property being salvaged is owned by another, and thus that it has not been abandoned”).

⁹⁷ *Id.* at 962.

⁹⁸ *Margate Shipping Co. v. M/V JA Orgeron*, 143 F.3d 976 (5th Cir. 1998).

⁹⁹ *Id.* at 985.

¹⁰⁰ 171 F.3d 943 (4th Cir. 1999).

¹⁰¹ *Id.* at 961. See *Columbus-America*, 974 F.2d at 459-60.

¹⁰² This subject deserves a more profound study. The right of property, as central principle of capitalism, is a privilege that pushes forward the global economy and gives a sense of stability to individuals. Therefore, it is an issue that requires a more extensive research. The U.S Constitution, *infra* note 104, as well as many others around the world, including the Universal Declaration of Human Rights, *infra* note 103, established the principle of ownership but it also expresses an exception to take away that right. The legal problems arouses when the privilege and the exception collapse together and the court is obliged to resolve under a sphere of public interest. See *The Akaba*, 54 F. at 200 (here the court stated that “[w]hen articles are lost at sea the title of the owner in them remains, even if they be found floating on the surface or cast upon the shore”).

Pursuant to the United States Constitution, no one shall be “deprived of [...] property, without due process of law; nor shall private property be taken for public use, without just compensation”.¹⁰⁴ In addition, Article II of the Constitution of Puerto Rico provides that “[n]o person shall be deprived of his liberty or property without due process of law.”¹⁰⁵ Each citizen has a constitutional right of enjoyment of his property. At the international arena, the Universal Declaration of Human Rights¹⁰⁶ proclaims that “[e]veryone has the right to own property alone.”¹⁰⁷ It also ascertained that “[n]o one shall be arbitrarily deprived of his property.”¹⁰⁸ Justice Davis, in *Peralta v. U.S.*,¹⁰⁹ arguing the perception of federal constitutional protection, ruled that “[t]he right of property, as every other valuable right, depends in a great measure for its security on the stability of judicial decisions.”¹¹⁰ More than one hundred years later, Justice Thomas averred that property rights were not instituted merely as a federal safeguard to its citizens and concluded that ownership rights “are not created by the Constitution, but rather by existing rules or understandings that stem from an independent source such as State law.”¹¹¹ Consequently, even though the Salvage Law precedes the Law of Finds, both concepts must be weighted with the individual facts of each case and a disparity must be found between them so the right of ownership of the finder or salvor is not affected by the right of property of the original proprietor.

¹⁰³ See Universal Declaration of Human Rights, G.A. Res. 217A (III), at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (10 Dec. 10, 1948).

¹⁰⁴ U.S. CONST. amend. V.

¹⁰⁵ P.R. CONST. art. II §7.

¹⁰⁶ Human Rights, *supra* note 103.

¹⁰⁷ *Id.* at art. 17(1).

¹⁰⁸ *Id.* at art. 17 (2).

¹⁰⁹ *Peralta v. U.S.*, 70 U.S. 434 (1865).

¹¹⁰ *Id.* at 439.

¹¹¹ *Delaware v. New York*, 507 U.S. 490, 502 (1993) (citing with authority *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972)).

The property is considered discarded if it was expressed and made public by the owner or if the items are recovered from ancient shipwrecks and no owner appears in court to claim them.¹¹² A party may demonstrate abandonment only by a palpable and unmistakable act indicating repudiation of ownership.¹¹³ In *Falgout Brothers*,¹¹⁴ the District Court ruled that, under the Law of Finds, “[a]bandonment must be proven by clear and convincing evidence, such as the owner’s express declaration abandoning title.”¹¹⁵ To comply with the protection of the right of property, the act of abandonment by the owner must be without any ambiguity. It does not have to be formal or subscribe by a legal document but it must be clear and noticeable enough to revoke a right of ownership. Jurisprudence has favored the presumption that when property is lost at sea, the title of such *res*¹¹⁶ remains with the original owner, regardless of the time passed.¹¹⁷ Hence, Salvage Law, under this assumption and contrary to the Law of Finds, aims to restore lost property to the rightful owner.¹¹⁸ Both of these doctrines focus on promoting the search and discovery of lost property at sea; in a case under Salvage Law for the owner of the vessel and under the Law of Finds for the finder’s own interest.¹¹⁹

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Falgout Brothers v. S/V Pangaea*, 966 F.Supp. 1143 (S.D.Ala 1998).

¹¹⁵ *Id.* at 1145.

¹¹⁶ BLACK’S, *supra* note 28 at 1332. The term is defined as “[a]n object, interest, or status, as opposed to a person.” See BOUVIER’S, *supra* note 28 at 2905 vol. 3.

¹¹⁷ *R.M.S. Titanic v. Wreck and Abandoned Vessel, (Titanic II)* 286 F.3d 194, 203 (4th Cir. 2002), *cert. denied* 537 U.S 885 (2002) (here the court analyzes the balance between the right to property of a salvor over the artifacts saved. Circuit Judge Niemeyer concluded that “[b]y saving property at sea, salvors do not become the property’s owner; rather, they save it for the owners and become entitled to a reward from the owner or from his property”. *Id.* at 202. He stated that “[u]nder salvage law, salvor receives lien in property, not title to property, and as long as case remains salvage case, lien holder cannot assert right to title even though he may end up with title following execution or foreclosure of lien”). *Id.* 204-05. Moreover, he distinguished it from the Law of Finds and expressed that “[u]nder finds law, title to abandoned property vests in person who reduces that property to his or her possession; before such conversion is made, however, prerequisites for divesting title must be satisfied. *Id.* at 205.

¹¹⁸ Thomas H. Belknap, Jr., *Treasure Salvage: Finders Keepers?*, 80 MAR. REP. & ENGINEERING NEWS ¶8 (2007).

¹¹⁹ *Id.* at ¶9.

V. SALVAGE SERVICE: ESSENTIAL PRINCIPLES FOR AN AWARD

The landmark case *Blackwall*,¹²⁰ defined salvage as “the compensation allowed to persons by whose assistance a ship or her cargo has been saved, in whole or in part, from impending peril on the sea, or in recovering such property from actual loss, as in cases of shipwreck, derelict, or recapture.”¹²¹ Salvage service is defined as the “aid or rescue given, either voluntary or by contract, to a vessel in need of assistance because of present or apprehended danger.”¹²² It is distinguishable from towing services¹²³ in the matter that salving procedures are done under dangerous circumstances. The right to salvage is an ancient rule of maritime law and is not based on contractual rights.¹²⁴ Any awards for such services are based on the necessary costs incurred to conduct the salvage operation;¹²⁵ they are, as a general rule, judged and established by the court. Likewise, the reader must keep in mind that the award is not a simple payment for the service on *quantum meruit*¹²⁶ or as compensation *pro opera et labore*,¹²⁷ but “as

¹²⁰ *The Blackwall*, 77 U.S. 1 (1869).

¹²¹ *Id.* at 12. *See The Sanibe*, 101 U.S. 384 (1879) (here the definition set by *The Blackwall*'s is reaffirmed again by Justice Clifford).

¹²² BLACK'S, *supra* note 28 at 1367. *See BOUVIER'S*, *supra* note 28 at 3003 vol. 3.

¹²³ *Id.* As general principle, towing is not considered a dangerous activity. It has been explained that “[a]lthough salvage may involve towing, it is distinguished from *towing service*, which is rendered merely to expedite a voyage, not to respond to dangerous circumstances.” *Id.*

¹²⁴ *Id.* (citing 2 E.W. Chance, PRINCIPLES OF MERCANTILE LAW, 98 (10th ed. 1951)).

¹²⁵ *Id.*

¹²⁶ BLACK'S, *supra* note 28 at 1276 (“[t]he reasonable value of services; damages awarded in an amount considered reasonable to compensate a person who has rendered services in a quasi-contractual relationship”). *See Rivera-García*, *supra* note 94 at 395. *See BOUVIER'S*, *supra* note 28 at 2777 vol. 3.

¹²⁷ There is no definitive definition for the phrase *pro opera et labore*. However, from the use in the following cases, it can be inferred that the concept means just compensation for the work rendered, without any extra reward or reimbursement. *See The Massasoit*, 16 F.Cas. 1070, 1072 (D.C.Mass. 1844) (“[a]nd the conclusion finally arrived at is, that they are not to be rewarded as general salvors, but are to be allowed, in addition to wages, a reasonable compensation, *pro opera et labore*”); *The Dawn*, 7 F.Cas. 204, 212 (D.C.Me. 1841) (“[b]ut they are to be allowed a reasonable compensation *pro opera et labore*”); *The Henry Ewbank*, 11 F.Cas. 1166, 1170 (C.C.Mass. 1833) (“[s]alvage, it is true, is not a question of compensation *pro opera et labore*. It rises to a higher dignity. It takes its source in a deeper policy. It combines with private merit and individual sacrifices larger considerations of the public good, of commercial liberality, and of international justice. It offers, a premium, by way of honorary award, for prompt and ready assistance to human sufferings; for a bold and fearless intrepidity; and for that affecting chivalry, which forgets itself in an anxiety to save property, as well as life”); *The Two Catherines*, 24 F.Cas. 424, 431 (C.C.R.I. 1821) (“[t]he sole ground, upon which they are denied salvage in common cases, is that they are earning wages within the line of their ordinary duty; and when this is removed, they stand upon the same right as other persons, to be paid a compensation *pro opera et labore*”). *Titanic II*, 286 F.3d at 203 (“[s]alvage, it is true, is not a

a reward given for perilous services voluntarily rendered, and as an inducement to mariners to embark in such dangerous enterprises to save life and property.”¹²⁸ Salvage is the voluntarily rescue of imperil property, on or under water, with the sole intention of receiving a reward based on the situations and the extreme conditions that induced the vessel to be salvaged in the first place.¹²⁹

In order to be entitled to a salvage claim, salvors must be successful in their service. No compensation will be allowed if the property is not salvaged or if it eventually perishes.¹³⁰ In *Falgout Brothers*,¹³¹ the District Court underlined the rule that for a salvor to be eligible for a salvage award, he must provide evidence that the vessel was actually in maritime peril¹³² and for which it could not have been rescued without his assistance. This principle was instituted in 1879 by the Supreme Court in *The Sanibe*,¹³³ with the implementation of three elements for a valid claim: (1) a marine peril; (2) service voluntarily rendered when not required as an existing duty or from a special contract; and (3) success in whole or in part, or that the service rendered contributed to such success.¹³⁴ The deficiency of any of the requirements eliminates the

question of compensation *pro opera et labore*”). See Paul V. Niemeyer, *Applying ‘Jus Gentium’ to the Salvage of the R.M.S. Titanic in International Waters-The Nichols J. Healy Lecture*, 36 J. MAR. L. & COM. 431, 441 (2005) (quoting from *The Henry Ewbank*, 11 F.Cas. 1166, 1170 (C.C.Mass. 1833)).

¹²⁸ *Sanibe*, 101 U.S. at 384. See *Blackwall*, 77 U.S. at 10.

¹²⁹ Salvages services are not only needed it but they are essential to the security of sailors and vessels, including the most insignificant cargo. Navigation is by nature dangerous and the risks of a ship suffering a disaster at sea are more likely than improbable. The ability to provide such services and its legal recognition among maritime world induces seamen and adventurous people to embark to save life and property. Not allowing the performance of salvage service and the probable compensation that goes with it, will take from society, and specially those individuals that depend on marine labor, from the confidence that salvors provide to the security of sailors and vessels. It will also deny the peoples from all nations the opportunity to have returned to their country some of the cultural and national property that was lost at sea. See *The Camanche*, 75 U.S. 448, 465 (1869); WILLIAM I., JR. MILWEE, *MODERN MARINE SALVAGE* (Cornell Maritime Press 1996).

¹³⁰ *Blackwall*, 77 U.S. at 12. See *Titanic I*, 171 F.3d at 963.

¹³¹ *Falgout Brothers v. S/V Pangaea*, 966 F.Supp. 1143 (S.D.Ala 1998).

¹³² See *Lancaster v. Smith*, 330 F. Supp. 65, 67 (S.D.Ala. 1971) (here the court explained that “[t]he peril to which a vessel is subjected need not be one of imminent danger of destruction or damage. Rather, it is sufficient that a vessel be subject to potential danger of damage or destruction to make her subject to salvage services”).

¹³³ *The Sanibe*, 101 U.S. 384 (1879).

¹³⁴ *Id.* at 384.

presumption of marine peril and raises the question of standing for a salvor to recover salvage expenses on a court of law.

The court articulated in *Titanic II* that when salvage services are provided, “the salvor acts on behalf of the owner in saving the owner's property even though the owner may have made no such request or had no knowledge of the need.”¹³⁵ It is presumed that an owner of a vessel desires salvage services.¹³⁶ It is this assumption, together with the guarantee of compensation under the law, which encourages salvors to render their service to protect the rights of others. This assurance is what provides the “inducement to seamen and others to embark in such undertakings to save life and property.”¹³⁷ It is public policy, as explained in *Blackwall*, to persuade “the hardy and adventurous mariner to engage in these laborious and sometimes dangerous enterprises, and with a view to withdraw from him every temptation to embezzlement and dishonesty, the law allows him, in case he is successful, a liberal compensation.”¹³⁸ Since 1804, through the voice of Justice Marchall in *Mason v. Ship Blaireau*,¹³⁹ under the *stare decisis*¹⁴⁰ doctrine, the court has ruled that in rewarding services rendered at sea they must find them “in a liberal and enlarged policy.”¹⁴¹ The court has emphasized that a very ample compensation is intended as an encouragement “which it is for the public interests, and for the general interests of humanity, to hold forth to those who navigate the ocean.”¹⁴² The reward should be, not merely a calculation to meet the specific amount of the expenses, but as a remuneration that resembles the necessity, dangerous, dedication, and

¹³⁵ *Titanic I*, 171 F.3d at 963.

¹³⁶ *Id.*

¹³⁷ *Blackwall*, 77 U.S. at 14.

¹³⁸ *Id.* at 10.

¹³⁹ *Mason v. Ship Blaireau*, 6 U.S. 240 (1804).

¹⁴⁰ BLACK'S, *supra* note 28 at 1443. The term is defined as “[t]he doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation.” See BOUVIER'S, *supra* note 28 at 3118 vol. 3.

¹⁴¹ 6 U.S. 240, 266.

¹⁴² *Id.*

significance of the service given to sailors and to the nation's interest of having its property rescued and returned.

The assurance of a liberal compensation is there to encourage rescue of lost property; nonetheless, it was not until 1869, when, in *Blackwall*, the court established¹⁴³ the circumstances an admiralty proceedings must be considered in determining the amount of compensation for a salvage service. These are:

- (1) the labor expended by the salvors in rendering the salvage service;
- (2) the promptitude, skill, and energy displayed in rendering the service and saving the property;
- (3) the value of the property employed by the salvors in rendering the service, and the danger to which such property was exposed;
- (4) the risk incurred by the salvors in securing the property from the impending peril;
- (5) the value of the property saved; and
- (6) the degree of danger from which the property was rescued.¹⁴⁴

Notwithstanding, the Fifth Circuit, in *Platoro Ltd. v. The Unidentified Remains of a Vessel*,¹⁴⁵ noted that “[a] salvage award may be denied if the salvor forces its services on a vessel despite rejection of them by a person with authority over the vessel”.¹⁴⁶ Salvors have to exercise a trust over the property salvaged¹⁴⁷ and cannot remove property from a wreck for their own use; when these expectations are breached, any salvage claim forfeits.¹⁴⁸

The need for salvors and their most needed service has made International Law part of their existence; to the extent that forums all over the world have developed judicial procedures to hear salvors' claims when their clients refused to recompense them. As a direct consequence, salvages without the proper reward will cause catastrophic results to ships and property. Vessels will be left at will and remarkable ships and their cargo will be lost in the pages of history

¹⁴³ See *Falgout Brothers v. S/V Pangaea*, 966 F.Supp. 1143 (S.D.Ala 1998) (here the court discusses the factors to be considered in awarding salvage services and reaffirms the requirements established in previous jurisprudence).

¹⁴⁴ *Blackwall*, 77 U.S. at 13-14.

¹⁴⁵ *Platoro Ltd. v. The Unidentified Remains of a Vessel*, 695 F.2d 893 (5th Cir. 1983).

¹⁴⁶ *Id.* at 902.

¹⁴⁷ *Titanic I*, 171 F.3d at 964. See *Cromwell v. The Bark Island City*, 66 U.S. 121 (1861).

¹⁴⁸ *Id.* As an example see *The Mabel v. Lewis*, 61 F.2d 537 (9th Cir. 1932) (on a libel case where it is alleged that salvors lie to force their salvage service, the Court of Appeals holds that salvors will be liable to the owner).

claimed by the ocean. Discouraging it will deprive humanity of the opportunity to get back some of its identity lost at sea. A hold on liberal salvage compensations will promote an inevitable misfortune on wreck sites and, indirectly, exacerbates the burden on any nation's interest of protecting their archeological underwater culture heritage.¹⁴⁹ Since 1879, the U.S. Supreme Court understood the importance and emphasized in *Sabine*¹⁵⁰ the doctrine that once a salvor has rendered his services, he can lien upon the property salvaged¹⁵¹ to begin an *in rem*¹⁵² action against the vessel until the lien on it has been satisfied monetarily or extinguished by other means.¹⁵³

VI: SALVAGE AWARD BY THE COURT OF APPEAL OF PUERTO RICO IN *LOPEZ II*

Four years after *Lopez I* granted ownership to the Island of a wreck from a 17th century vessel,¹⁵⁴ in 1997, the Court of Appeals in *Lopez II* heard a claim from the State to deny compensation to the discoverers. The lower court had awarded one third (1/3) of the value of the

¹⁴⁹ Archeological underwater culture heritage is a subject that deserves a more extensive study; it is mentioned for the sole purpose of the main analysis. The controversy raises the question of the necessity of salvors and their services as the main source of archeological discoveries. There are many perspectives and points of view among many scholars and the debate encounters many issues along the border line of economic sources and cultural preservation. See LAURAJANE SMITH, *ARCHAEOLOGICAL THEORY AND THE POLITICS OF CULTURE HERITAGE* (Routledge 2004); *SUBMERGED CULTURAL RESOURCE MANAGEMENT: PRESERVING AND INTERPRETING OUR SUNKEN MARITIME HERITAGE* (James D. Spirek and Della A. Scott-Ireton eds., Springer 2003); among others.

¹⁵⁰ *Sanibe*, 101 U.S. at 386.

¹⁵¹ See *Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel*, 640 F.2d 560, 567 (5th Cir. 1981) (here the court averred that, although Salvage Law grants the salvor a right to possession of the property while awaiting payment for his services, “the salvage of a vessel or goods at sea, even when the goods have been abandoned, does not divest the original owner of title or grant ownership rights to the salvor, except in extraordinary cases”).

¹⁵² BLACK'S, *supra* note 28 at 809. It is defined as “[i]nvolving or determining the status of a thing, and therefore the rights of persons generally with respect to that thing.” Furthermore, an action *in rem* “is one in which the judgment of the court determines the title to property and the rights of the parties, not merely as between themselves, but also as against all persons at any time dealing with them or with the property upon which the court had adjudicated” *Id.* (citing R.H. Graveson, *Conflict of Laws* 98 (7th ed. 1974)). *In rem* jurisdiction is the power used by the court to exercise its authority over a thing. See *Titanic I*, 171 F.3d at 957 (here the court reviews the definition of the different types of jurisdictions).

¹⁵³ The salvor can obtain an interest on the vessel or a percentage of the ship's owner's business. He can also be paid by a lien over the vessel or over other property as he sees suitable. If the property salvaged is goods or artifacts, then the salvor can profit from the sale or trade of them. See *Treasure Salvors*, 640 F.2d 560 (5th Cir. 1981). See also *Titanic I*, 171 F.3d 943 (4th Cir. 1999).

¹⁵⁴ The shipwreck was found some 450 meters off the coast Puerto Rico. The salvors recovered a cannon, a cannonball, scissors, nails, pins and wood and metal objects. It was concluded that the vessel was from the 17th century because the astrolabe found had the year 1616 engraved on it. See *Lopez I*, 130 P.R. Dec. at 52.

objects found by an analogous application of a Spanish Law of December 24, 1962¹⁵⁵ (hereafter *Spanish Act of 1962* or *of Act of 1962*). The Commonwealth argued in its appeal that “a salvage award could not be granted because the salvage expedition was not authorized and because the archeological value of the salvaged objects restricted their free trade.”¹⁵⁶ Moreover, it averred that, in the alternative, discoverers could be compensated solely for the actual expenses incurred in the salvage operation.¹⁵⁷ In their answer, the salvors proposed the application of *Article 285* and asked for fifty percent of the value of the artifacts salvaged as provided by statute. A significant part of the court argument was based on the opinion that the reward granted was consonant with *Article 285* and the principles set by *Blackwall* and observed by the *Private Act*.

The Court of Appeals recognized that the application of the *Harbor Act of 1880* was “questionable;” regardless of this perception, it concluded that an error was not committed.¹⁵⁸ This outcome was not revised by the Supreme Court; therefore, it makes the analysis the current interpretation of the law. Notwithstanding the elucidate decision, it will have not prevailed if it had been taken by *certiorari*¹⁵⁹ to the Highest Court. The Civil Code is clear¹⁶⁰ and the Supreme Court of the United States has expressed many times in regards the proceeding and requirements that must be looked when solving a claim of salvage services using its leading case on this subject. Likewise, in *Lopez I* the Supreme Court ruled that when the Puerto Rico Legislative Assembly has not enacted laws to such effects or when Congress expressly determines

¹⁵⁵ *Lopez II*, 1997 A.M.C. at 2256. See Laws Regulating Rescues, Salvage, Towage, Finds, and Extractions at Sea (R.C.L. 1962, 60), <http://www.derechomaritimo.info/L60-1962.htm>. The official Spanish name of the act is *Régimen de Auxilio, Salvamento, Remolque, Hallazgo y Extracciones Marítimas*.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 2262.

¹⁵⁹ BLACK'S, *supra* note 28 at 241. The term is defined as “[a]n extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review.” See BOUVIER'S, *supra* note 28 at 443 vol. 1 (“[a] writ issued by a superior to an inferior court of record, or other tribunal or officer, exercising a judicial function, requiring the certification and return to the former of some proceedings in some cause already terminated, in cases where the procedure is not according to the course of the common law”).

¹⁶⁰ See *supra* note 19 (discussing the differences between Civil Law tradition and Common law).

otherwise, federal maritime law applies.¹⁶¹ Since the *Protection Act* and the *ASA* were not applicable to *Lopez I* or *Lopez II* given that the facts in controversy occurred before their enactment, the lower court was bound to rule under *Article 285* in conjunction with the *Jones Act*. In the alternative, it had to follow the *stare desisis* set forth by the U.S. Supreme Court, instead of reasoning under a Spanish Act not legislated by Puerto Rico or applicable to our legal system.¹⁶²

VII. DISCUSSION

The court in *Lopez II* has argued that the ruling over the findings by Richard Fitzgerald, Bill Embree, and Mike Woods in *Lopez I* were governed by the *Harbor Act of 1880*, which was extended to Puerto Rico by Royal Decree.¹⁶³ Even though the outcome of *Lopez I* correctly gave ownership to the State, it is not from this Act that the Island has property rights but from its Constitution and Civil Code. In Puerto Rico, the right of property has a constitutional protection and, in the absence of a rightful owner or his heirs, the State acquires it by statute. There was no

¹⁶¹ *Lopez I*, 130 P.R. Dec. at 59.

¹⁶² As we make this statement, it is not intended to flatten Spain judicial influence in Puerto Rico. Spain ruled the Island over a period extending 405 years (1493-1898). During this time many laws enacted by the King or by his Royal Court came to be enforceable on the Island by royal decree. Conversely, many of Puerto Rico's current statutes and special laws are attuned with the ones from Spain. Nonetheless, this compatibility is based on the use of exact copies of codes and acts from Spain. As an example, Puerto Rico Civil Code has close to one thousand five hundred (1,500) articles that are identical to the ones found in the Spanish Civil Code. The Supreme Court of Puerto Rico has developed an interpretation doctrine called the *Spanish Doctrine* or the "doctrina española" in order to use jurisprudence from Spain to interpret issues arising from identical statutes. See *Delgado Rodríguez v. Rivera Siverio*, 2008 PRSC 30; *Meléndez Guzmán v. Berríos López*, 2008 PRSC 3; *Medina Garay v. Medina Garay*, 2007 PRSC 18; *Ramírez Quiñones v. Soto Padilla*, 2006 PRSC 100; *González Rosario v. Morales Merced*, No. KAC2003-7712, 2008 WL 728885, (P.R. T.C.A. Jan. 31, 2008); *El Pueblo de Puerto Rico v. Sustache*, No. KLCE0701433, 2007 WL 4618484, (P.R. T.C.A. Nov. 29, 2007). We do not see a problem with this practice. Moreover, we believe the actions of the court are not only justified but necessary and imperative. However, (*emphasis added*) we stand behind the argument that the *Spanish Doctrine* can only be use where the court is reasoning a case where the law applicable and current in Puerto Rico is the same in Spain and has been interpreted by Spain Supreme Court or by well respected scholars. The doctrine cannot be used to take a law from Spain years later after the change of sovereignty and apply it to Puerto Rico under the argument that both countries have a history together. When Spain's Parliament enacts laws, they are meant for the necessity and public policy of the Kingdom of Spain and not the wellbeing of Puerto Rico. In the absence of local law, under Article 7 of the Civil Code, the court must "decide in accordance with equity, which means that natural justice, as embodied in the general principles of jurisprudence and in accepted and established usages and customs, shall be taken into consideration." P.R. LAWS ANN. tit. 31, § 7 (1930). Courts have to resolve in accordance with the current equity in the Island and general principles of jurisprudence collected from the U.S and Puerto Rico Supreme Courts.

¹⁶³ *Lopez II*, 1997 A.M.C. at 2258.

need for the court to rule under the *Act of 1880* when the Island's Constitution provided a legal disposition to give ownership to the State. The *Jones Act* granted Puerto Rico ownership over all submerged lands that surround it. The federal statute provided for these terrains to belong to the State as public property. Moreover, as mention before, *Article 285* expresses that “[h]idden treasures belong to the owner of the land on which they are found.”¹⁶⁴ Hence, any treasure found on public land, including the submerged ones, belongs to the State by law.

The items found were located in a wreckage of a sunken ship resting on land belonging to the Commonwealth. There is no evidence showing that the owner of the vessel came forward to defend his ownership. Consequently, the ship and its belonging became abandoned property left at will on terrain own by the government. The State, pursuant to *Article 550*,¹⁶⁵ acquired possession by default. In the alternative, as no rightful heir came forward to make a claim, the Puerto Rico Constitution positioned the State as the sole successor.¹⁶⁶ Once again, *Article 285* provides the legal directive that the court must follow to compensate the finder of treasures on State property: “when the discovery is made by chance on property belonging to another, or to the Commonwealth of Puerto Rico or of the United States, one-half thereof shall be allowed to the finder.”¹⁶⁷ Here the law is clear and lacks the need for interpretation. Once the goods found are on State's land, the finder has a statutory right to claim fifty percent of the value of what it has found.

Notwithstanding the provisions established by the Civil Code, the lower court argued that in the absence of a local or federal statute to determine what compensation the finders were

¹⁶⁴ P.R. LAWS ANN. tit. 31, § 1116 (1930).

¹⁶⁵ P.R. LAWS ANN. tit. 31, § 1951 (1930).

¹⁶⁶ *Id.*

¹⁶⁷ tit. 31, § 1116 (1930).

entitled, it had to apply by analogy the *Act of 1962* which granted only one third to the finders.¹⁶⁸ Affirming this decision, the Court of Appeals averred that even if they had considered under analogous application the *Protection Act*, local statutes¹⁶⁹ of the Civil Code *in pari materia*,¹⁷⁰ the amount awarded was justified. Furthermore, the court admits that even though they are conscious that the application of the *Harbor Act of 1800* is questionable and less favorable for the salvors as the aforementioned local statutes,¹⁷¹ there was no error given that a one third compensation was adequate.

There are aspects of the decision that the reasoning of the court and fail to comply with basic principles of salvage service and local law. In one part of the resolution, Judge Brau Ramírez states that salvage award is not only to compensate the expenses incurred but also to recompense “the danger to which the respondents were exposed, the degree of difficulty of the operation, and the benefit reaped by the People of Puerto Rico by obtaining such goods.”¹⁷² Likewise, he avers that an argument not to grant a salvage compensation will clash with *Article 285*, “which allows a compensation for treasure trove belonging to the Commonwealth”¹⁷³ and the *Protection Act* “which allows a compensation of up to fifty percent (50%) of the value of the objects found.”¹⁷⁴ The court avows that “[c]ontrary to civil-law jurisdictions, in the United States there is no fixed formula to fix the amount of a salvage award; awards are set on a case by case

¹⁶⁸ §20 Laws Regulating Rescues, Salvage, Towage, Finds, and Extractions at Sea (R.C.L. 1962, 60), <http://www.derechomaritimo.info/L60-1962.htm>. The Spanish Act provided that “[t]he things found shall be returned to their owner when he appears to claim his right to the property, after paying the expenses [incurred] and one third of the value of the things found” (as cited in *Lopez II*, 1997 A.M.C. at 2259).

¹⁶⁹ P.R. LAWS ANN. tit. 31, § 1116 (1930); and, P.R. LAWS ANN. tit. 31, § 1955 (1930).

¹⁷⁰ BLACK’S *supra* note 28 at 807. The term is defined as “[o]n the same subject; relating to the same matter.” See BOUVIER’S, *supra* note 28 at 2454 vol. 3. See also *Ex Parte Bird*, 5 P.R. Dec. 247 (1904).

¹⁷¹ *Lopez II*, 1997 A.M.C. at 2262.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

basis;”¹⁷⁵ however, its reasoning is based in part on *Blackwall’s* principles which are similar to the elements set forth in the *Protection Act*. Despite the court acceptance of the right of the salvor to receive a fair compensation and its recognition of the basis for an award established in *Blackwall*, it does exactly the opposite.

The application of the *Protection Act* by the court in *Lopez II* would have awarded up to the same proportion as ascertain by *Article 285* which is fifty percent of what is it found. The law avows that “[t]he share of the Commonwealth of Puerto Rico shall never be less than fifty (50) percent of the market value of all the objects recovered, whether they are of a historical, cultural or archaeological value, or solely of a financial value.”¹⁷⁶ Hence, an award cannot be more than fifty percent of the salvage property regardless of what it is. In the alternative, the *Act of 1962* used by the lower court provided for the salvor to be rewarded with the expenses incurred plus a one third of the value of things salvaged.¹⁷⁷ Although the salvors were given compensation, an award of one third is not only erroneous but it does not comply with fundamental principles of salvage service established by federal jurisprudence, applicable to the courts of Puerto Rico under *stare decisis* doctrine. It is more divisive, when the court agrees that the salvors “gave the People of Puerto Rico the opportunity to recover an object that is part of our cultural heritage, and, which, otherwise, would have been lost.”¹⁷⁸ Salvor must be reimbursed for their actions in a way that they are encouraged to continue to bring vanished property to the rightful owner.

The assurance that salvors will be fairly rewarded if successful, as stated by Justice Marshall, provides the incentive to people to embark in expedition to recover property.¹⁷⁹ The guarantee under the law that they will receive a liberal compensation for their findings

¹⁷⁵ *Id.*

¹⁷⁶ P.R. LAWS ANN. tit. 18, § 1511 (1987).

¹⁷⁷ *Lopez II*, 1997 A.M.C. at 2259.

¹⁷⁸ *Id.* at 2263.

¹⁷⁹ *Blackwall*, 77 U.S. at 14.

encourages and persuades them to engage in dangerous enterprises and, at the same time, dissuade them from every temptation to embezzle what they have salvaged.¹⁸⁰ Since 1804, it has been the opinion of U.S. Supreme Court that salvage service must be compensated in a liberal way.¹⁸¹ Salvors should not only be reimbursed for their actual expenses but with a reward that is equivalent in proportion with the salvage property and the importance of the service to society. Mr. Fitzgerald and the others were entitled, under *Article 285*, to exactly half of what they found. If the *Act of 1962* had been correctly applied by the court, then they should have been given one third plus an incentive for their actions. This amount would have been allowed under *Protection Act. Lopez II* does not specify what the award of one third entailed; however, just by applying the minimum principles of salvage service, it is not consonant with the *Act of 1962* or the *Protection Act*.

VIII. CONCLUSION

The *Jones Act* granted authority to the Puerto Rican People, for the first time in their history, over the submerged lands in and around their Island. Years later, the Civil Code was enacted in which *Article 285* awarded with a one-half of the value to those who discovered a treasure trove on lands belonging to the State. The Constitution of the Commonwealth of Puerto Rico and legislated statutes provided for the State to be the sole owner of abandoned property, as it is situated as the last heir by law of all its citizens. The reasoning by the Supreme Court *Lopez I* has overlooked the legal reality on the Island and laws applicable on this jurisdiction for over sixty five years. The ruling by the Court of Appeals is not only bad jurisprudence but errs in the implementation of a legal interpretation contrary to the laws, the moral and public policy of the Commonwealth of Puerto Rico.

¹⁸⁰ *Id.* at 10.

¹⁸¹ *Mason*, 6 U.S. at 266.

In both cases, the verdicts were based on the interpretation by the courts of Spanish Acts. These laws were enacted by Spain to observe what they believe are just norms in their jurisdiction. It is true that neither the *Preservation Act* nor *ASA* applied at the moment of the discoveries; conversely, *Article 285* provided a legal remedy, under an imperative application of the *Jones Act*, to deal with the controversy. Even so, there was enough salvage service doctrine jurisprudence established by the highest court of the United States applicable to Puerto Rico that made it unnecessary for the court to interpret two Spanish Acts that were not legislated or debated in the Island Legislature or Congress nor enacted with the perspective that they were to affect Puerto Rican jurisprudence.¹⁸² Despite this, both courts searched for a foreign law to deprive Richard Fitzgerald and the others from local law and federal jurisprudence available to them.

The *Protection Act* does not eliminate the rights given by *Article 285*. As expressed by Justice Denton in *Lopez I*, citing *Caraballo*,¹⁸³ a law is not overruled if the new one does not do so deliberately or if it does not make the previous one unenforceable. The act does not have such clause. Moreover, it does not even have the power to amend the provisions over submerge lands stated in the *Jones Act*. It provides for the administrative authority of the State over archeological sites and property no located on its lands or in its possession. The application of *ASA* in Puerto Rico only asserts the power of the *Jones Act* and the ability of the State to administer abandoned shipwrecks through the *Protection Act*. However, in reality, *ASA* does not give Puerto Rico its aptitude to regulate its underwater archeology since the Commonwealth Constitution already provides the legal basis for that governmental power. The compensation awarded by *Lopez II* is a clear violation of *Article 285*. Moreover, if the *Protection Act* was interpreted by analogous

¹⁸² See *supra* note 161.

¹⁸³ *Ex parte Caraballo*, 9 P.R. Dec. 326 (1905).

application, the outcome of the case is a clear infringement to the principles of salvage service used as guidelines for awarding compensation.

It must be recognized that without a salvor's effort to search, find and collect abandoned or lost artifacts at sea, Puerto Rico would not be able to preserve them. These findings provide great information about the Island's past. Scholar Christopher Bryant asserts that early "shipwrecks possess too much social, historical, scientific, and monetary value to be treated as underwater tombs."¹⁸⁴ The rule of law must resemble Puerto Rico national interest over its underwater cultural heritage and the right to an adequate compensation to those that provide such discoveries. Salvors must be compensated for their service and be encouraged to continue their search for the vessels that were lost in our history. Their work is what allows the State to be able to study and preserve artifacts before they eventually perish on the ocean floor.¹⁸⁵ It is imperative to remember that we are able to share our past with future generations at museums and exposition because of willingness and work provided by salvors. The refusal of the courts to uphold the law and apply *Article 285* not only harms salvors and deters future finding but also obliterate society's participation in acquiring the knowledge and the benefits underwater cultural heritage can provide.

¹⁸⁴ Bryant, *supra* note 83 at 114.

¹⁸⁵ See Ricardo Cortés Chico, *Huracán de intereses azota tesoros submarinos*, EL NUEVO DÍA, Sept. 17, 2006, at 1, available at ANENDI.COM, File No. 41079 (discussing the growing interest on submerged treasures and the never ending obstruction by local agencies for salvage services) and *Desinterés por galeones*, EL NUEVO DÍA, Sep. 3, 2006, at 1, available at ANENDI.COM, File No. 37679 (discussing that the lack of government resources is preventing the study, conservation and salvaging of artifacts sunk around Puerto Rico).