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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Memorandum	...Task Force on Puerto Rico's Status [9 PAGES RELEASED IN WHOLE ON PRA RE-REVIEW 09/08/2025 JLS] - To: Josh Bolten - From: Ruben Barrales, et al.	9	07/25/2001	
002	Executive Order	Executive Order 13183 [1 PAGE RELEASED IN WHOLE ON PRA RE-REVIEW 09/08/2025 JLS]	1	12/23/2000	

COLLECTION TITLE:

Counsel's Office, White House

SERIES:

Kavanaugh, Brett - Subject Files

FOLDER TITLE:

Puerto Rico Task Force

FRC ID:

9693

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
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MEMORANDUM

TO: Josh Bolten
FR: Ruben Barrales & Debbie Spagnoli
RE: Clinton's Executive Order Establishing a Task Force on Puerto Rico's Status
DT: July 25, 2001

PURPOSE

The purpose of this memo is to provide you with background information and recommendations with regard to whether or not the President should implement the Clinton Executive Order (EO) dated December 23, 2000, establishing a Task Force on Puerto Rico's Status. According to the Clinton EO, the Task Force was supposed to report to the President on its actions no later than May 1, 2001. On April 30, 2001, President Bush amended the Clinton EO by deleting "May 1, 2001" and inserting in its place the date "August 1, 2001."

The options, as we see them, are as follows:

- 1) Implement the Clinton EO without change and name the members of the Task Force by August 1, 2001.
- 2) Rescind the Clinton EO by August 1, 2001.
- 3) Announce a decision to replace the Clinton EO with a new EO to be produced within 60 days.¹

RECOMMENDATION

The President should move forward on providing a process for Puerto Rico's determination of its status, but he needs to do so slowly and cautiously. It is important to replace the Clinton Executive Order with our own because we need to ensure that the 1992 Bush Memo on Puerto Rico provides the proper framework for the administration of federal law and policy rather than the Clinton EO. Consequently, we recommend option three.

¹ Attached is a draft EO to be staffed within the 60 day period. The draft EO ensures that the 1992 Bush Memo on Puerto Rico provides the framework for the administration of federal law and policy in Puerto Rico, rather than the Clinton EO. The draft EO retains aspects of the Clinton EO within the Bush Memo framework.

BACKGROUND

Clinton Executive Order on Puerto Rico's Status²

One month before leaving office, President Clinton issued an Executive Order establishing the President's Task Force on Puerto Rico's Status. Citing Public Law 106-346 (see attached), Clinton's EO states that, "[I]t is the policy of the executive branch of Government of the United States of America to help answer the questions that the people of Puerto Rico have asked for years regarding the options for the islands' future status and the process for realizing an option."

The EO empowers the Task Force to:

- 1) Consider and develop positions on proposals, without preference among the options, for the Commonwealth's future status.
- 2) Discuss such proposals with representatives of the people of Puerto Rico and the Congress.
- 3) Work with leaders of the Commonwealth and the Congress to clarify the options to enable Puerto Ricans to determine their preference among options for the island's future status that are not incompatible with the Constitution and basic laws and policies of the United States.
- 4) Implement such an option if chosen by a majority, including helping Puerto Ricans obtain a governing arrangement under which they would vote for national government officials if they choose such a status.

In the accompanying Memorandum for the Heads of Executive Departments and Agencies, Clinton directed the Co-Chairs of the Task Force to "conduct an ongoing dialogue with the Governor and Resident Commissioner of Puerto Rico, Puerto Rico's major political parties and other groups that advocate a change in the islands' status, and the Chairs and Ranking Minority Members of the House of Representatives Committee on Resources and the Senate Committee on Energy and Natural Resources." He also directed the Co-Chairs to "monitor the expenditure of funds for public education on and a public choice among Puerto Rico's status options pursuant to Public Law 106-346."

Membership

The Task Force is to be comprised of designees of each member of the President's Cabinet and the Co-Chairs of the President's Interagency Group on Puerto Rico (a Group created under Clinton and not currently in effect). The Task Force is to be co-chaired by the AG designee and a co-chair of the Interagency Group (which was IGA).

The Task Force is also charged with providing advice and recommendations to assist the Executive Office of the President in fulfilling its responsibilities under Public Law 106-346 to transfer funding to the Elections Commission of the Commonwealth of Puerto Rico.

² See attached EO and accompanying Memorandum.

Public Law 106-346 – Disbursement of funds³

Public Law 106-346 provides for the disbursement of \$2.5 million to the Elections Commission of the Commonwealth of Puerto Rico as a transfer to be used for “Objective, non-partisan citizens’ education and a choice by voters regarding the islands’ future status.” None of the funds may be obligated until 45 days after the Elections Commission of the Commonwealth of Puerto Rico submits to the Committees on Appropriations for approval⁴ an expenditure plan developed jointly by the Popular Democratic Party, the New Progressive Party, and the Puerto Rican Independence Party. The Elections Commission shall include in the expenditure plan, additional views from any party that does not agree with the plan.”

In a statement released on October 23, 2000, Clinton said the following with regard to HR 4475 (PL 106-346):

“...I am especially pleased this account includes the funding I sought to assist the people of Puerto Rico in deciding their islands’ future status, an issue that the Puerto Ricans have long asked us to clarify. Other Presidents and I have sought legislative action, and there has been some, but this is the first piece of legislation passed by both Houses of Congress that supports Puerto Rico choosing its future status. The account also provides funds to educate Puerto Ricans on the available options, relying on the Office of the President to ensure the options presented to the voters are realistic in light of the Constitution and the basic laws and policies of the United States. Once the options have been presented, the account also funds a vote by the Puerto Rican people to choose what their status should be. I am already working to clarify the options, and I am also working to ensure that the next President will continue the effort to resolve this issue.”⁵

Elections Commission

The Puerto Rico Elections Commission is composed of a Chairman, who is its Executive Officer and represents the public interest, and an Electoral Commissioner representing each of the principal political parties, parties by petition or coalesced parties. A First, a Second and a Third Vice-Chairperson are also members of the Commission, who have a voice but no vote. Attendance at the meetings by the Chairman and two Commissioners constitutes a quorum.

The Commission has original jurisdiction, either *motu proprio* or at the request of the interested party, to consider, take cognizance and resolve any matter or controversy of an

³ See attached Public Law.

⁴ During the bill signing, Clinton said it was his position that the language requiring congressional committee approval for a plan to spend certain funds was unconstitutional under *INS v. Chadha* (1983) 462 U.S. 919.

⁵ See attached statement.

electoral nature. Every agreement must be approved by the unanimous vote of the Commissioners present when it is voted upon. Any matter submitted to the consideration of the Commission which does not receive a unanimous vote shall be decided, for or against, by the Chairman, whose decision shall be deemed to be that of the Commission, and may be appealed in the manner provided for by law.

Judge Melecio is the current Chairman of the Commission and has been for approximately 12 years. He is respected by all of the factions and parties. Unfortunately, however, he has announced his retirement at the end of this year. Upon his retirement, Governor Calderon will be able to appoint a new Chairman who will have the power to decide issues whenever there is a conflict between the parties.

Memoranda of President

Nov. 30, 1992, 57 F.R. 57093

The most significant White House document on Puerto Rican matters is a Presidential Memorandum signed by President George Bush on November 30, 1992 (57 F.R.57093).⁶ This Memo sets forth constitutionally sound terms for continued administration of Puerto Rico under the "commonwealth" system of local self-government, as well as for eventual resolution of the ultimate status of Puerto Rico. In this Memorandum for the Heads of Executive Departments and Agencies, President Bush outlines how the federal government should treat Puerto Rico administratively and how the administration should deal with any matters related to status.

With regard to how we treat Puerto Rico administratively, the Memoranda directs as follows:

"I hereby direct all Federal departments, agencies, and officials, to the extent consistent with the Constitution and the laws of the United States, henceforward to treat Puerto Rico administratively as if it were a State, except insofar as doing so with respect to an existing Federal program or activity would increase or decrease Federal receipts or expenditures, or would seriously disrupt the operation of such program or activity. With respect to a Federal program or activity for which no fiscal baseline has been established, this memorandum shall not be construed to require that such program or activity be conducted in a way that increases or decreases Federal receipts or expenditures relative to the level that would obtain if Puerto Rico were treated other than as a State.

With regard to issues of status, the memorandum directs:

"If any matters arise involving the fundamentals of Puerto Rico's status, they shall be referred to the Office of the President. This guidance shall remain in effect until Federal legislation is enacted altering the current status of Puerto Rico in accordance with the freely expressed wishes of the people of Puerto Rico."

⁶ See attached Memorandum.

VIEWS OF INTERESTED PARTIES

Governor Calderon

The Commonwealth was created in 1952 when Congress sponsored an island-wide referendum based on majority rule and compatibility of a locally proposed political structure with federal law. It is a system of local self-government subject to the territorial powers of Congress under article IV, section 3, clause 2 of the U.S. Constitution, as well as supremacy of federal law.

Governor Calderon, a member of the Popular Democratic Party (PDP) and leader of the Vieques/anti-Navy campaign, is pushing an aggressive and unconstitutional "enhanced Commonwealth agenda." Her rhetoric as of late has been anti-American and independence-oriented.

Governor Calderon advocates making the present "Commonwealth" status a permanent form of political union under the U.S. Constitution, but only if based on federal recognition of Puerto Rico as an autonomous nation that is no longer a territory of the United States. Her goal is to win federal recognition of the separate sovereignty and nationality of Puerto Rico. Congress and the courts have rejected this "non-territorial nation-state" formula.

The Governor's lobbyist, Charlie Black, will advocate against any plan that does not allow Commonwealth as an option.

Just yesterday, Governor Calderon announced plans to hold a referendum on status next year. Sources are reporting that she said she would later this year invite the two other party presidents to discuss her plan for a committee that would work out the ability of Puerto Ricans to choose their status preference. Reporters note she also said a local tripartisan consensus is needed. Both the statehood party (PNP) and the Independence Party (PIP) don't like her plan for the committee, which would be dominated by 'Commonwealthers' and independence advocates who work with the Commonwealth party. The PNP has said it won't join the committee.

Republican Party/Statehood

The status issue is very important to our Republican friends in Puerto Rico. Statehood is something they have been trying to attain for years. They were very disappointed with us over the Vieques/Navy decision. They want us to come out in full support of statehood (we told them we cannot do that) and advocate a process to help Puerto Rico choose its future status as soon as possible.

They do not want us to move forward on status if in fact it will include "commonwealth" as a viable option. Some of our friends are a bit wary about trusting us on status because

we let them down on Vieques. Those friends do not want to be "sandbagged" on the issue. They, of course, are battling Governor Calderon over this issue and believe that if we give her another victory (as we did with Vieques), their party would not be able to recover.

Independence Party

Governor Calderon won election by just 3% of the vote. She campaigned primarily on a Vieques/Anti-Navy message. The Independence Party joined with Governor Calderon on the issue of Vieques, and basically provided her with her slim margin of victory. On the issue of status, however, the Independence Party parts company with Governor Calderon. They would very much like to see a vote on statehood versus independence.

Candidate and Governor George Bush

"I have long been a friend to Puerto Rico and I consistently support Puerto Rican statehood if the Puerto Rican people choose that option." (Terra Questionnaire; Voter.com)

"As citizens residing in a commonwealth of the United States, the Puerto Rican people have the right to vote for their island's political status. I have advocated statehood for the island, if that's what the Puerto Rican people choose," Bush said. (3/5/00, Global News Wire)

Attorney General Dick Thornburgh

Former Attorney General Dick Thornburgh has provided an extensive and thorough briefing paper on what is a constitutionally valid status for Puerto Rico. His position is that Commonwealth is not a constitutionally valid long-term solution. Moreover, in the short term, he states that it would be ill-advised to acquiesce in the status quo if local government's legal position is that Puerto Rico has sovereign powers and constitutional rights that in fact are not secured under the current status.

He opines that the Citizens of Puerto Rico have been misinformed for years about the constitutional validity of Commonwealth as their ultimate status. The residents deserve to know the truth about their rights and responsibilities under any status option before they can give informed and effective consent to the form of government under which they live.

Congress

Congress is ultimately vested with the authority to permanently resolve Puerto Rico's political status dilemma per the territorial clause of the U.S. Constitution (Article IV, Section 3, Clause 2) which states that: "Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the U.S."

Congress has tried to tackle the issue of status a number of times over the past 10 + years. The proposals considered several options including more autonomy for Puerto Rico under the current status, enabling acts for Statehood and Independence, self-executing plebiscites and non-binding referenda.

The Government of Puerto Rico conducted a plebiscite on Puerto Rico's political status in November 1993. Each political party developed their own definitions of the status they advocated. The "Commonwealth" proposition received a plurality of 48.6%, statehood received 46.3%, and independence received 4.4% of the vote.

On December 14, 1993, the Legislature of Puerto Rico requested a response from the US Congress to the 1993 Puerto Rico status vote, and asked Congress to indicate what they would recommend in order to resolve the problem of Puerto Rico's political status.

Introduced by Chairman Don Young (R-AK) and Elton Gallegly (R-CA), HR 3024 provided the first formal consultation to the people of Puerto Rico on their ultimate political status. Both the 104th Congress (HR 3024/4281, S 2019) and the 105th Congress (HR 856, S 472) attempted to accomplish the same things with their respective bills.

The legislation established a three -stage framework to resolve Puerto Rico's status:

- 1) A US sanctioned referendum would occur before the end of 1998 in which the voters of Puerto Rico would have three choices:
 1. Maintain the Commonwealth status as defined by the Resolution
 2. Independence
 3. Statehood
- 2) A majority vote for separate sovereignty of statehood would require the President to forward a transition plan of 10-years (minimum) to the Congress. The transition plan would first need to be approved by Congress, then the people of Puerto Rico could ratify the plan.
- 3) The third and final stage would begin at least two years prior to the end of the transition period when the President is required to send an implementation act to Congress, which after approval, would go to the people of Puerto Rico for ratification.
- 4) In the event that the majority didn't vote for sovereignty, the current "Commonwealth" status as a territory is continued. In this event, periodic referenda would be required (every four years) until the status issue is resolved.

HR 3034 was approved 44-1 in the Resources Committee. It was also approved by voice vote by the Subcommittee on Native American and Insular Affairs. The Resolution was sent to the Rules Committee, but never acted upon. S 2019 was referred to the Committee on Energy and Natural Resources, but never reported out.

HR 856 was voted out of the Resources Committee 44-1 and passed the House 209-208. S 472 was never voted on.

Congressman Hansen plans to hold hearings on status issues during the current congressional session.

POLITICAL CONSIDERATIONS

Let's discuss.

EXAMPLE: WORKING DRAFT EXECUTIVE ORDER⁷

This draft Executive Order simplifies the bureaucratic structure for managing Puerto Rico issues, including status, and it establishes a general threshold standard of legal sufficiency for status proposals while leaving the Bush Memo in place as the preeminent policy document on Puerto Rico.

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered as follows:

Section 1: Administration of Federal Law and Policy. The executive branch of the Government of the United States of America shall administer federal law and policy relating to Puerto Rico in accordance with this Order, and the policies and procedures established under the Memorandum of the President for the Heads of Executive Departments and Agencies, dated November 30, 1992, (57 F.R. 57093).

Section 2. Interagency Group on Puerto Rico. A singular Interagency Group on Puerto Rico is hereby established for the purpose of implementing this Order. The Interagency Group shall be composed of the designees for the heads of the executive departments and agencies, and shall operate as directed by or under the authority of the President. The Task Force shall be coordinated by the Executive Office of the President through the Deputy Assistant to the President and Director of Intergovernmental Affairs.

Section 3. Resolution of Puerto Rico's Political Status. As part of its responsibilities for the administration of federal law and policy in Puerto Rico, the Interagency Group on Puerto Rico shall coordinate federal measures to advance a process for resolution of Puerto Rico's ultimate political status. Such measures shall be consistent with eventual attainment by Puerto Rico of an ultimate status that fully implements the principle of government by consent based on full enfranchisement of all citizens, subject to such terms and conditions as Congress may prescribe under applicable federal law.

Establishment of a political status recognized as constitutionally permanent will better enable Puerto Rico to realize its potential for political, economic and social development.

Section 4. Legal Sufficiency of Political Status Proposals. Any proposal for resolution of the political status of Puerto Rico formally adopted and presented to the federal government by the Government of Puerto Rico acting under its local constitution and in accordance with the Puerto Rico Federal Relations Act (64 Stat. 319), including any proposal based upon the results of a political status referendum or plebiscite conducted in

⁷ Format and rhetoric based on former Attorney General Dick Thornburgh's draft Executive Order.

1 week - 10 days
for EO's

task force
on EOP

principals
+
designees

Rulgem
co-chain
w/ AG
designate

should be
political
appointees

Interion
Hub

Commerce
SBA
Education
Defense

Q1 report
to President

↓
name
people

ⓐ meet August
1 deadline

Puerto Rico under local law, shall be referred to the Interagency Group on Puerto Rico and to the Attorney General of the United States. The Attorney General shall determine whether or not the definitions of status options and terms for status resolution presented in any such proposal, or on the ballot in any such referendum or plebiscite, are fully compatible with the provisions of the Constitution, laws and treaties of the United States as made applicable to Puerto Rico under federal law. The Attorney General shall report to the Interagency Working Group and the President as to whether such proposal and the terms employed in or underlying it meet this standard of legal sufficiency. This section shall not apply to any status proposal in which the status definitions and terms for status resolution adopted by the local government or presented on the ballot in a referendum or plebiscite are prescribed by Congress in federal law or by Executive Order of the President of the United States.

Section 5. Administrative Provisions. Until such time as Congress provides for transition to a permanent and fully self-governing status, the administration of federal law and policy in Puerto Rico will be carried out pursuant to this Order.

Executive Order 13183 and the Memorandum of the President on Resolution of Puerto Rico's Status, dated December 23, 2000, shall be implemented as directed under this Order, and are superseded to the extent they are inconsistent with this Order or policies and measures adopted hereunder. The responsibilities of the "President's Task Force on Puerto Rico" and the "President's Interagency Group on Puerto Rico", as referred to in Section 2 of Executive Order 13183, shall be carried out by the Interagency Group on Puerto Rico established under Section 2 of this Order. In the event that the Elections Commission of Puerto Rico proposes a plan for the expenditure of funds for a self-determination process under Public Law 106-346, the Executive Office of the President shall release such funds only if the Attorney General of the United States reviews the plan and reports to the President that meets the legal sufficient standard set forth in Section 4 of this Order.

⇒ name people in
Cabinet Affairs

EXECUTIVE OFFICE OF THE PRESIDENT AND FUNDS APPROPRIATED TO THE
PRESIDENT

Office of National Drug Control Policy

For an additional amount, \$7,000,000: Provided, That \$5,000,000 shall be available for continued operation of the technology transfer program: Provided further, That \$2,000,000, to remain available until expended, shall be available for counternarcotics research and development projects, to be used for the continued development of a wireless interoperability communication project in Colorado.

Unanticipated Needs

For expenses necessary to enable the President to meet unanticipated needs, in furtherance of the national interest, security, or defense which may arise at home or abroad during the current fiscal year, as authorized by 3 U.S.C. 108, \$3,500,000: Provided, That, of such amount, \$2,500,000 shall become available on March 31, 2001, and shall be provided to the Elections Commission of the Commonwealth of Puerto Rico as a transfer to be used for objective, nonpartisan citizens' education and a choice by voters regarding the islands' future status: Provided further, That none of the funds described in the preceding proviso may be obligated until 45 days after the Elections Commission of the Commonwealth of Puerto Rico submits to the Committees on Appropriations for approval an expenditure plan developed jointly by the Popular Democratic Party, the New Progressive Party, and the Puerto Rican Independence Party: Provided further, That the Elections Commission of the Commonwealth of Puerto Rico shall include in the expenditure plan additional views from any party that does not agree with the plan.

**Memorandum on Resolution
of Puerto Rico's Status**

December 23, 2000

*Memorandum for the Heads of Executive
Departments and Agencies*

Subject: Resolution of Puerto Rico's Status

Although Puerto Rico was acquired in connection with the Spanish-American War and United States citizenship is granted to persons born on the islands, Puerto Rico's ultimate status has not been determined. Until that issue is resolved, questions remain about how United States economic and social policies should apply to the citizens of Puerto Rico.

Further, although our citizens in Puerto Rico have been granted the exercise of authority on local matters similar to that of citizens of a State, they do not have voting representation in the Federal Government.

All three of Puerto Rico's major political parties are based on different visions of what the options for a fully democratic status are, and what the best status would be. And all advocate a substantial change in the islands' status. The Commonwealth held a referendum on options for its future status in December 1998, including the current governing arrangement, and other recognized options, but a majority of the vote was for a "None of the Above" column.

Much of the debate on the issue concerns what options are available to Puerto Rico, in light of the Constitution and the basic laws and policies of the United States. The elected representatives of the people of Puerto Rico have, therefore, repeatedly petitioned the Federal Government to clarify the islands' status options as well as the process by which

Puerto Ricans can determine the islands' future status.

The United States has a responsibility to answer such questions. Successive Presidents, and the Congress in 1998, have supported the people of Puerto Rico in determining their status preference from among options that are not incompatible with the Constitution and basic laws and policies of the United States. I have made it the policy of the executive branch to work with the leaders of the Commonwealth and the Congress to enable Puerto Ricans to choose their future status. We also have the responsibility to help Puerto Ricans obtain the necessary transitional legislation toward a new status, if chosen.

To ensure that the Federal Government continues to address the fundamental question concerning the islands until it is resolved, by the authority vested in me as President by the Constitution and the laws of the United States of America, including Public Law 106-346, I have today issued an Executive Order establishing the President's Task Force on Puerto Rico's Status (President's Task Force) and further direct as follows:

1. The Co-Chairs of the President's Task Force shall conduct an ongoing dialogue with the Governor and Resident Commissioner of Puerto Rico, Puerto Rico's major political parties and other groups that advocate a change in the islands' status, and the Chairs and Ranking Minority Members of the House of Representatives Committee on Resources and the Senate Committee on Energy and Natural Resources. This dialogue shall focus on the options for Puerto Rico's future status and the process by which Puerto Ricans can realize such an option. It shall seek to facilitate communications among the offices that the aforementioned officials represent on matters relating to the status of the Commonwealth, and ensure official attention to, and facilitate action on, such matters. In particular, the dialogue shall seek to clarify the options for Puerto Rico's future status and enable Puerto Ricans to choose among those options.
2. The Co-Chairs of the President's Task Force shall monitor the expenditure of funds for public education on and a public choice among Puerto Rico's status options pursuant to Public Law 106-346. This monitoring shall include ensuring that educational materials are accurate, objective, and non-partisan and that they are consistent with the standards set forth in the Executive Order entitled "Establishment of the President's Task Force on Puerto Rico's Status."
3. The heads of executive departments and agencies shall cooperate with the Co-Chairs in fulfilling the assignments provided for herein and in the accompanying Executive Order.

William J. Clinton

LEVEL 1 - 1 OF 1 DOCUMENT

Title 3 --
The President
Memorandum for the Heads of Executive Departments and
Agencies

Memorandum of November 30, 1992

57 FR 57093

December 2, 1992

TEXT: Puerto Rico is a self-governing territory of the United States whose residents have been United States citizens since 1917 and have fought valorously in five wars in the defense of our Nation and the liberty of others.

On July 25, 1952, as a consequence of steps taken by both the United States Government and the people of Puerto Rico voting in a referendum, a new constitution was promulgated establishing the Commonwealth of Puerto Rico. The Commonwealth structure provides for self-government in respect of internal affairs and administration, subject to relevant portions of the Constitution and the laws of the United States. As long as Puerto Rico is a territory, however, the will of its people regarding their political status should be ascertained periodically by means of a general right of referendum or specific referenda sponsored either by the United States Government or the Legislature of Puerto Rico.

Because Puerto Rico's degree of constitutional self-government, population, and size set it apart from other areas also subject to Federal jurisdiction under Article IV, section 3, clause 2 of the Constitution, I hereby direct all Federal departments, agencies, and officials, to the extent consistent with the Constitution and the laws of the United States, henceforward to treat Puerto Rico administratively as if it were a State, except insofar as doing so with respect to an existing Federal program or activity would increase or decrease Federal receipts or expenditures, or would seriously disrupt the operation of such program or activity. With respect to a Federal program or activity for which no fiscal baseline has been established, this memorandum shall not be construed to require that such program or activity be conducted in a way that increases or decreases Federal receipts or expenditures relative to the level that would obtain if Puerto Rico were treated other than as a State.

If any matters arise involving the fundamentals of Puerto Rico's status, they shall be referred to the Office of the President.

This guidance shall remain in effect until Federal legislation is enacted altering the current status of Puerto Rico in accordance with the freely expressed wishes of the people of Puerto Rico.

Source: All Sources > Secondary Legal > Law Reviews, Combined 

Terms: "puerto rico" and independence and statehood and constitution and date(aft 1999) ([Edit Search](#))

2001 Det. C.L. Rev. 85, *

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Spring, 2001

2001 Det. C.L. Rev. 85

LENGTH: 7097 words

ARTICLE: PUERTO RICAN **INDEPENDENCE**: WHOSE CHOICE? THE PEOPLE OF **PUERTO RICO** OR THE UNITED STATES GOVERNMENT?

John D. Ingram *

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SUMMARY:

... In Dorr, the Court held that the Constitutional guarantee of trial by jury did not apply to the Philippines. ... This was followed by the acquisition of Cuba, **Puerto Rico** and the Philippines after the Spanish-American War in 1898, and of Hawaii, also in 1898. The acquisition of Cuba, **Puerto Rico**, and the Philippines created a substantial controversy as to their future status. ... As I have discussed in Part I, the people of the fifty states and their Congress seem quite content to leave **Puerto Rico** in status quo, though it is likely that **independence** would be granted if requested. ... By the same token, since the United States seems to claim absolute power over the political status of **Puerto Rico**, it could presumably cast **Puerto Rico** adrift, unilaterally declaring that **Puerto Rico** is henceforth an independent nation. ... On the other hand, it might well be in the best interest of the United States to cast off **Puerto Rico** and declare it to be an independent nation. ... It would then be an independent nation, with its own culture, language, and national identity, which are so highly valued by Puerto Ricans. ...

TEXT:

[*85]

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Introduction

The United States obtained sovereignty over the island of **Puerto Rico** as a result of the Spanish American War and the Treaty of Paris in 1898. Ever **[*86]** since, there has been a continuing debate over the proper and preferred status of **Puerto Rico**: the present Commonwealth, perhaps with enhanced rights and privileges, **statehood**, or **independence**. It always seems to be assumed that the status of **Puerto Rico** can only be determined by the will of the people of **Puerto Rico** and by the action of the United States

government. But is this assumption correct? Could the people of **Puerto Rico** simply declare their **independence** and become a sovereign state, without the approval and consent of the United States government? Or could the United States government simply divest **Puerto Rico** and declare it an independent, sovereign nation without the consent and approval of the Puerto Rican people, just as the United States acquired dominion over **Puerto Rico** in 1898 without any action by the people of **Puerto Rico**? This article explores these questions.

I. History of **Puerto Rico**

A. 1898

As every student of American history knows, through most of the nineteenth century there was a popular belief that it was the "manifest destiny" of the United States to occupy as much of the land as possible in North America between the Atlantic and Pacific Oceans.¹ After that expansion was completed, it was natural for interest to turn toward the Caribbean, where "the United States had an increasing commercial and strategic concern."² This expansionist attitude led almost inevitably to the Spanish-American War, at the end of which Spain ceded Cuba, Porto Rico,³ Guam, and the Philippine Islands to the United States.⁴ The treaty expressly provided that the "civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the [*87] Congress."⁵ As is almost always the case, none of the people living on any of these islands were consulted as to their wishes concerning their future governance and sovereignty.⁶

B. **Puerto Rico** Before 1898

As was true in North, Central and South America, there were people living in **Puerto Rico** long before the Europeans arrived in 1493.⁷ It is estimated that "as many as 50,000 Taino or Arawak Indians" lived there at that time.⁸ Spanish colonization began in 1508, and there was an unsuccessful revolt by the native islanders against the Spaniards in 1511.⁹ African slaves began arriving in 1513, and marriage was allowed between Spaniards and Taino Indians from 1514 on.¹⁰

There have been "citizens of **Puerto Rico**" for many centuries. Before 1493 these citizens were Indians of South American ancestry. By 1898, the citizens of **Puerto Rico** were also Spanish subjects, and were primarily a mixture of Spanish, African and indigenous Indians, as they are today. In 1917, the Jones Act¹¹ conferred United States citizenship on all "citizens of Porto Rico,"¹² who were also given the right to reject United States citizenship within six months and remain "citizens of Porto Rico." The wording of the Jones Act suggests that the citizens of **Puerto Rico** were given a choice between being U.S. or Puerto Rican citizens, and could not be both. But since Congress made the offer unilaterally, and the citizens of **Puerto Rico** had no voice in the matter, it can well be argued that they may consider themselves citizens of both **Puerto Rico** and the United States if they wish to, and it seems likely that many Puerto Ricans feel just that way. [*88]

C. 1898 to 1952

Not long after the end of the "splendid little war"¹³ in 1898, many Americans began to wonder about annexing new territories inhabited by what they deemed to be alien people.¹⁴ This led to much discussion by scholars, politicians, jurists, and others regarding ways to keep the new territories in a status that would not lead to **statehood** or grant their people all of the Constitutional protections enjoyed by American citizens on the mainland. This new status was soon endorsed by the United States Supreme Court in the Insular Cases.¹⁵ In effect, the Insular Cases created a second class of citizens who were not entitled to all of the rights and privileges of the United States **Constitution**. This result was based on the Court's view that, since the Treaty of Paris did not provide for the incorporation of **Puerto Rico** into the United States, **Puerto Rico** was an unincorporated territory, and the Constitutional requirement of uniformity of taxation did not apply.¹⁶ This established a precedent which

was followed in later cases involving other claims to Constitutional protection.

Justice White's "incorporation" theory was first adopted and applied by a majority of the Court in *Dorr v. United States*.¹⁷ In *Dorr*, the Court held that the Constitutional guarantee of trial by jury did not apply to the Philippines.¹⁸ The majority of the Court reaffirmed the holding of *Downes v. Bidwell*¹⁹ that Congress had plenary power, in legislating for the territories, that was limited only by those "general prohibitions" in the **Constitution** which protect the fundamental rights of the people.²⁰ The majority held that the right to trial by jury was "merely a method of procedure," not a fundamental right, and thus Congress could decide whether to provide this right in the Philippines or not.²¹

In 1917, Congress enacted the Jones Act,²² which provided for **Puerto Rico** to become an "organized but unincorporated" territory of the United States; it established a locally elected Senate and House, and a bill of rights; **[*89]** and it granted Puerto Ricans United States citizenship. Thus, Puerto Ricans were granted citizenship by act of Congress, not by the **Constitution**, and their citizenship is not guaranteed by the **Constitution**.

Over the years, the Supreme Court has recognized the following rights as applicable to Puerto Ricans: the Fourth Amendment right to be free from unreasonable searches and seizures;²³ the Due Process Clause of either the Fifth or Fourteenth Amendment;²⁴ the guarantee of equal protection of either the Fifth or Fourteenth Amendment;²⁵ freedom of speech under the First Amendment;²⁶ and the constitutional right to travel.²⁷ On the other hand, Puerto Ricans do not have a Sixth Amendment right to trial by jury,²⁸ the right to vote for President and Vice-President of the United States,²⁹ or the right to equal treatment in regard to welfare benefits.³⁰ In *Califano v. Gautier Torreo*, the Court held that Congress "may treat **Puerto Rico** differently from the States so long as there is a rational basis for its actions."³¹

D. 1952 - The Commonwealth

In 1950, a Puerto Rican **constitution** bill was introduced in Congress, and it became law as the "Puerto Rican Federal Relations Act."³² It provided for holding a referendum to determine if the islanders wanted to "organize a government pursuant to a **constitution** of their own adoption."³³ If so approved by a majority of the voters, the Puerto Rican legislature could call a constitutional convention to adopt a **constitution**, which would be submitted to Congress for approval.³⁴ **[*90]**

The referendum vote was strongly in favor of a constitutional convention, which then met in 1951 and 1952. The **constitution** adopted by the convention was approved by the Puerto Rican electorate by a majority of more than eighty percent and accepted by Congress with minor amendments.³⁵

Puerto Rico thus became a **commonwealth**, a new form of government for a United States territory. Unlike previous home-rule arrangements for territories which presumed eventual **statehood**, commonwealth status for **Puerto Rico** did not. It appeared to be an attempt to recognize the desire of Puerto Ricans to continue to be part of the United States while still retaining their own distinct culture and language. This new status did not purport to change any of the rights and privileges, or the lack thereof, of Puerto Ricans living in an "unincorporated territory."

E. Plebiscites and Other Movements Toward Change After 1952

A non-binding plebiscite was held in **Puerto Rico** in 1967. Sixty percent of the voters favored "continuation of the present status,"³⁶ Thirty-nine percent favored **statehood** and one percent voted for **independence**. Since Congress had never agreed to be bound by a plebiscite, it simply ignored the results.³⁷

In 1989, the Puerto Rican legislature notified Congress that the Puerto Rican people wanted

to declare their preference as to their future political status. As before, Congress took no action, but the people of **Puerto Rico** went ahead and held another plebiscite anyway.³⁸ This time, commonwealth status was favored by 48.6% of the voters, **statehood** by 46.3%, and **independence** by 4.4%.³⁹

Very recently, in 1998, Puerto Rican voters held yet one more non-binding referendum, which gave the electorate five choices: (1) remain a commonwealth, with United States citizenship subject to revocation by Congress; (2) enter into a "free association" with the United States that would be somewhere between commonwealth and **independence**; (3) become a state; (4) declare **independence**; or (5) none of the above.⁴⁰ **Statehood** drew 46.5% of the vote; "none of the above" drew 50.3%.⁴¹ The pro-**statehood** party [***91**] (PNP) controlled the legislature, and had drafted the alternatives to favor **statehood**. Other groups, including the pro-commonwealth party (PPD) joined in support of "none of the above" to deny a majority vote in favor of **statehood**,⁴² and to indicate their unwillingness to accept "Commonwealth status if subject to the plenary powers of Congress and entailing a type of American citizenship revocable at the will of Congress."⁴³

II. Acquisition of Territory by the United States

Prior to the Civil War, the United States acquired and occupied all of the land between present-day Canada and Mexico westward to the Pacific Ocean. Most of the land between the original states and the Mississippi River was simply taken from the Native Americans living there by settlers who moved in and took possession.⁴⁴ The remainder of the land comprising the present continental forty-eight states was acquired by conquest, purchase and treaty: Florida, the Louisiana Purchase, our Southwest, formerly part of Mexico, California, Oregon, the Gadsden Purchase. In acquiring all of this new land, it seemed to be universally assumed that the land would be occupied primarily by "Americans," that territorial governments would be established, and that **statehood** would be achieved at an appropriate time in the future. By 1912, this anticipated process had been completed, and all of the continental United States was included in the forty-eight states.

After the Civil War, however, a new kind of territorial acquisition began, starting with the purchase of Alaska from Russia in 1867.⁴⁵ This was followed [***92**] by the acquisition of Cuba, **Puerto Rico** and the Philippines after the Spanish-American War in 1898,⁴⁶ and of Hawaii, also in 1898.⁴⁷ The acquisition of Cuba, **Puerto Rico**, and the Philippines created a substantial controversy as to their future status. The concern was that these new territories were different from our previous acquisitions, being already well populated by "racially and culturally distinct peoples."⁴⁸ No longer was there a widespread presumption that a new territory would eventually become a state.⁴⁹

Indeed, as to the Philippines, in 1916 Congress declared its intention of eventually granting **independence** to the Philippine Islands,⁵⁰ and **independence** was granted in 1946.⁵¹ This was not so with **Puerto Rico**. With its proximity to the mainland, continued control of **Puerto Rico** was desirable because of the economic opportunities there, and its strategic location for defense of the Panama Canal. So the Puerto Rican people simply went from Spanish rule to American rule in 1898, with no real resistance. They had already been ruled by others for over 400 years, and they welcomed the American invaders as hopefully representing more benevolent rule in the future. Unlike the Cubans or Filipinos, who wanted **independence** and did not accept United States rule, Puerto Ricans did not seem to have any expectation of **independence** or self-rule in 1898.

III. Analogous Situations

There really are no analogous situations; **Puerto Rico** seems to be sui generis. As to other United States acquisitions, Cuba became independent immediately; Alaska and Hawaii were presumed to have the potential for **statehood**, with no real pressure for **independence**; the Philippines wanted [***93**] **independence** right from the start, it was promised by the

United States at a fairly early stage, and was granted in due time; and the Canal Zone was returned to Panama, giving freedom and **independence** to the residents of that area. No United States colony or territory has sought to declare its **independence** without the consent of the United States and the United States has never tried to cast off a colony or territory which did not want to be independent.

As to colonies and territories of other nations, a diligent search has not revealed any situation of either kind. Many peoples have become free and independent nations following a revolution. Many others have become independent with the consent, sometimes grudging, of their sovereign nation. But we have found no example of an imperial power casting off a colony or territory against the latter's wishes, or of a colony or territory declaring its **independence** and becoming an independent nation without either a revolution or the consent of the imperial nation.

IV. Advantages and Disadvantages of the Possible Statuses for Puerto Ricans

A. Commonwealth

Despite the general dissatisfaction in **Puerto Rico** with the subservient status created by the Insular Cases and continued by later cases and statutes, it is clear that most Puerto Ricans favor some kind of association with the United States.⁵² They believe that there are substantial economic and political benefits emanating therefrom that more than compensate for the loss of such vague rights as **independence** and total self-government.⁵³ The United States has in fact attempted to nurture economic growth in **Puerto Rico**, and even in its nearly colonial status there have been substantial improvements in public health, education and the standard of living.⁵⁴ Commonwealth status also allows **Puerto Rico** to maintain its cultural identity and widespread use of the Spanish language, which probably would not be true if **Puerto Rico** became a state.⁵⁵

While **Puerto Rico** is treated the same as the states under most federal criminal and regulatory statutes, there are some major exceptions. No federal income taxes are paid by corporations or individuals in **Puerto Rico**, though the Puerto Rican legislature largely offsets this by levying its own taxes at [***94**] about the same level.⁵⁶ On the debit side, Puerto Rican citizens are less favorably treated under some federal benefits programs, most notably Aid to Families with Dependent Children, Medicaid and food stamps.⁵⁷ The Supplemental Security Income Program⁵⁸ does not apply to **Puerto Rico**; instead, under a similar program, benefits for Puerto Ricans are at lower levels and are capped.⁵⁹ As a state, Puerto Ricans would receive substantially more money under these programs.

B. Statehood

As stated above, **Puerto Rico** would have a substantial financial gain if it became a state. It was recently estimated that in 1995 federal transfers to **Puerto Rico** under these programs would have increased by almost \$ 3 billion, and that this gain would far exceed the money lost by becoming subject to federal income taxes. This swing is due to generally low incomes on the island and high poverty levels.⁶⁰

In addition to the economic advantages, as a state **Puerto Rico** would also gain full equality with other states as to Constitutional rights, including trial by jury, all benefit and welfare programs, voting for President and Vice-President of the United States, and representation in Congress.

Despite widespread awareness of the financial, political and other advantages of **statehood**, there are many Puerto Ricans who feel that this does not outweigh the threat of loss of their distinct "culture" as a condition of a grant of **statehood**.⁶¹ Most Puerto Ricans feel that they have a distinctive culture, language and national identity of their own,⁶² which they value highly, much like the Quebecois. Even the pro-**statehood** party understands and recognizes

this, and seeks only a **statehood** which leaves in place the Puerto Rican culture, language and identity. Of course, it is probably unrealistic to think that Congress would ever grant **statehood** on this basis. ⁶³ [*95]

C. Independence

For the reasons discussed above, there is very little support in **Puerto Rico** for **independence**. ⁶⁴ In addition to those reasons, many Puerto Ricans value their United States citizenship and fear that it might be revoked if **Puerto Rico** became independent. ⁶⁵

Before the 1970s, the United States government was opposed to **independence** and discouraged it for economic, military and other reasons. Since that time, conditions have changed so much that **independence** could probably be had for the asking, but a vast majority of Puerto Ricans are not asking. ⁶⁶

Even though there is little if any likelihood of a willingness by Congress to improve the status of **Puerto Rico**, most Puerto Ricans "value . . . the actual and potential benefits of association with the world's greatest economic and military power, [and find that this] simply outweighs autonomy, particularly when considering the economic plight of neighboring nations such as the Dominican Republic, Cuba and Haiti." ⁶⁷

V. The View from the North

As I have discussed in Part I, the people of the fifty states and their Congress seem quite content to leave **Puerto Rico** in status quo, though it is likely that **independence** would be granted if requested. For over 100 years the United States has been unwilling to fully accept the Puerto Rican people, and there is little chance that this will change in the foreseeable future and make **statehood** a realistic possibility. **Puerto Rico** has little if any strategic military value in today's world. The economic impact on the United States of Puerto Rican **statehood** would be enormous. As discussed above, there would be a tremendous increase in payments to Puerto Ricans under various welfare and other programs. ⁶⁸ Nor would this be offset by an inflow of Puerto Rican income tax dollars. Application to the island of the earned income tax [*96] credit alone would more than wipe out **Puerto Rico's** total federal tax liability. ⁶⁹

Beyond all other reasons why the United States will almost surely continue to deny **statehood to Puerto Rico**, there can be little doubt that many Americans are not willing to accept as fully equal citizens millions of native Spanish-speaking people of color who want to maintain a distinct culture, language and identity of their own. ⁷⁰ This probable resistance is further evidenced by the recent support for "English-only" language requirements and increasing opposition to affirmative action.

VI. Can Either **Puerto Rico** or the United States Act Unilaterally?

Clearly, **Puerto Rico** cannot become a State or change its status as a Commonwealth without action by Congress. ⁷¹ In the past, Congress has never created a new State of the Union without an application for admission supported by a proposed new state **constitution** approved by the citizens of the proposed new state. However, there does not appear to be any barrier to the unilateral granting of **statehood** by Congress. ⁷² As to a unilateral change in Commonwealth status, it may well be that Congress has such authority, just as it took over sovereignty in 1898 and has exercised it ever since, sometimes seeking the approval of the Puerto Rican people but not feeling bound to do so. ⁷³

But what about **independence**? Could **Puerto Rico** simply declare itself to be an independent sovereign nation? On the other hand, could the United States make such a declaration and simply cut **Puerto Rico** loose from all ties to the United States?

As I have indicated in Part I, there is very little sentiment for **independence** among the people of **Puerto Rico**. Thus, it is very unlikely that **Puerto Rico** will attempt to declare its **independence**, even though there would probably be little opposition from the United States if it did. In any case, it would seem that the United States still feels that it has the power and authority to grant or deny **independence to Puerto Rico**. During a 1950 debate in the House of Representatives it was stated that "it will be Congress and Congress [***97**] alone which ultimately will determine the changes, if any, in the political status of the island." ⁷⁴ "This statement appeared to represent the consensus of opinion in the House." ⁷⁵ In 1953, before the General Assembly of the United Nations, the United States Ambassador stated that if the Puerto Rican legislature adopted "a resolution in favor of . . . even absolute **independence**," he would "recommend to Congress that . . . **independence** be granted." ⁷⁶ Again, this clearly indicates that the United States feels it has a veto power over Puerto Rican **independence** and nothing in the years since suggests any change in this view.

By the same token, since the United States seems to claim absolute power over the political status of **Puerto Rico**, it could presumably cast **Puerto Rico** adrift, unilaterally declaring that **Puerto Rico** is henceforth an independent nation. There would seem to be no way that **Puerto Rico** could counter this and continue a relationship with the United States against the will of the latter. Nor is it likely, with the strong anti-colonial attitude in world opinion, that other countries or the United Nations would support **Puerto Rico** in its resistance to **independence**.

VII. Should Either **Puerto Rico** or the United States Act Unilaterally?

As I have indicated previously, there seems to be very little interest among Puerto Ricans in **independence**. What they want is an improvement in their status, with full Constitutional rights and full participation in all welfare programs. Although that is not likely to happen in the foreseeable future, the people of **Puerto Rico** are probably much better off in their present relationship with the United States than they would be as an independent nation. They are now United States citizens, free to enter any part of the United States at will, with the backing of a powerful nation anywhere in the world. In economic terms, i.e., taxation, welfare, investment, trade, etc., the balance is heavily in favor of **Puerto Rico**. **Independence** would immediately make **Puerto Rico** just another poor, struggling third world country, ⁷⁷ with little hope of improvement in the years ahead.

On the other hand, it might well be in the best interest of the United States to cast off **Puerto Rico** and declare it to be an independent nation. In terms of taxation, welfare benefits, and so on, the United States would be way [***98**] ahead financially without a relationship with **Puerto Rico**. As to trade and investment, it is virtually certain that an independent **Puerto Rico** would welcome economic relations with the United States on favorable terms. **Puerto Rico** would need that desperately. As to strategic and military concerns, **Puerto Rico** has little if any such value in today's world, and it would probably be fairly easy for the United States to arrange for any bases that might be needed in **Puerto Rico**.

While there may be some question as to the power of Congress to unilaterally revoke the citizenship of Puerto Ricans upon the happening of Puerto Rican **independence**, ⁷⁸ there does not seem to be any Constitutional basis for such a revocation. Federal law provides that a United States national will lose his nationality by doing certain things with the intention of relinquishing United States nationality. ⁷⁹ Most United States citizens who became citizens of an independent **Puerto Rico** would have no intention of relinquishing United States nationality, and thus would become citizens of both countries. Many United States citizens hold dual citizenship ⁸⁰ and vote in both United States elections and those in another country. ⁸¹ In addition, descendants of these dual citizens would also often be entitled to dual citizenship. These descendants might be born in the United States; have parents who are both United States citizens, one of whom resided in the United States prior to the birth; have one parent who was present in the United States for a continuous period of one year prior to

the birth, and the other parent is a United States national; and so on.⁸²

Perhaps the best answer would be to try to find an evolutionary process under which **Puerto Rico** could move gradually from its present status to complete **independence**. **Puerto Rico** could move to "free association," in which it would maintain close political, economic and security relations with the United States, but take on more and more sovereignty and responsibility for its own affairs. Citizens of **Puerto Rico** and their descendants would continue to be eligible for United States citizenship just as they are now, even [*99] after **Puerto Rico** became fully independent. And as was the case with the Philippines, **Puerto Rico** would eventually be ready to stand alone (probably with continuing relationships with the United States by treaty). It would then be an independent nation, with its own culture, language, and national identity, which are so highly valued by Puerto Ricans.⁸³

FOOTNOTES:

↑n1 See Frederick Merk, *Manifest Destiny and Mission in American History: A Reinterpretation* 24-27 (1963). This view was often justified by a belief in "the superior qualities of the Anglo-Saxon race and its democratic institutions." Juan R. Torruella, *The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal* 7 (1985).

As most readers are probably aware, there are conflicting views on most of the issues discussed in this article. As to many of them I have presented both sides. As to others, I have stated my personal view based on my study and analysis. I am well aware that my view is that of a mainland American, who has never been to **Puerto Rico**, and that many others would disagree, especially those who have lived in **Puerto Rico** or have ties to the island.

↑n2 Merk, *supra* note 1, at 24-27.

↑n3 Congress continued the use of the word "Porto" until it was finally corrected to "Puerto" in 1932. See Act of May 17, 1932, ch. 190, 47 Stat. 158 (1932).

↑n4 Treaty of Peace Between the United States of America and the Kingdom of Spain, Dec. 10, 1898, U.S.-Spain, 30 Stat. 1754.

↑n5 *Id.* art. IX.

↑n6 The United States did not annex Cuba, and expressly "disclaimed any disposition or intention to exercise sovereignty, jurisdiction, or control over Cuba." H.R.J. Res. 24, 55th Cong. (2d Sess. 1898).

↑n7 Christopher Columbus "discovered" **Puerto Rico** on November 19, 1493.

↑n8 History of **Puerto Rico**, <http://welcome.topuertorico.org/history.html> at *1 (last visited Feb. 25, 2001). These tribes migrated over a long period of time from South America. Ediberto Roman, *The Alien-Citizen Paradox and Other Consequences of U.S. Colonialism*, 26 Fla. St. U. L. Rev. 1, 6 n.34 (1998) (citations omitted).

↑n9 See *History of Puerto Rico*, *supra* note 8.

↑n10 See *id.* Many of the Spaniards were gold-seekers, and few of the new settlers brought women with them. Thus, it was natural for them to take Indian wives. See *id.*

↑n11 See Porto Rico Civil Government (Jones) Act, ch. 145, 39 Stat. 951, 953 (1917).

↑n12 See *supra* note 3.

↑n13 Letter from John Hay, United States Ambassador to England, to President Theodore Roosevelt (1898), quoted in Frank Freidel, *The Splendid Little War* 3 (1958).

↑n14 See id. at 395.

↑n15 Huus v. New York & Porto Rico S.S. Co., 182 U.S. 392 (1901); Downes v. Bidwell, 182 U.S. 244 (1901); Dooley v. United States, 182 U.S. 222 (1901); Goetze v. United States, 182 U.S. 221 (1901); De Lima v. Bidwell, 182 U.S. 1 (1901) (holding that a territory acquired by the United States belongs to the United States and is subject to disposition by Congress).

↑n16 See Downes, 182 U.S. at 339-42 (White, J., concurring).

↑n17 See Dorr v. United States, 195 U.S. 138, 153 (1904).

↑n18 See Dorr, 195 U.S. at 149. The same result was reached as to **Puerto Rico** in Balzac v. Porto Rico, 258 U.S. 298 (1922).

↑n19 Downes, 182 U.S. at 244.

↑n20 See Dorr, 195 U.S. at 142.

↑n21 Id. at 144-45.

↑n22 See Porto Rico Civil Government (Jones) Act, ch. 145, 39 Stat. 951, 953 (1917).

↑n23 See Torres v. Puerto Rico, 442 U.S. 465, 471 (1979).

↑n24 See Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 668-69 n.5 (1974). The Court found it "unnecessary to determine which Amendment applied to **Puerto Rico**." Id.

↑n25 See Examining Bd. of Eng'rs, Architects and Surveyors v. Flores de Otero, 426 U.S. 572, 601 (1976) (declining to determine which amendment applied).

↑n26 See Balzac, 258 U.S. at 314.

↑n27 See Califano v. Gautier Torres, 435 U.S. 1, 4 (1978) (assuming without deciding).

↑n28 See Balzac, 258 U.S. at 313-14.

↑n29 See Igartua de la Rosa v. United States, 32 F.3d 8, 12 (1st Cir. 1994) (per curiam); Attorney General of Guam v. United States, 738 F.2d 1017, 1020 (9th Cir. 1984); Sanchez v. United States, 376 F. Supp. 239, 242 (D.P.R. 1974).

↑n30 See Harris v. Rosario, 446 U.S. 651 (1980); Califano, 435 U.S. at 4. Residents of **Puerto Rico** are not eligible for Supplemental Security Income (SSI) assistance for aged, blind and disabled people, and they receive lower levels of assistance under the Aid to Families with Dependent Children program [hereinafter AFDC]. See *infra* text accompanying note 58.

↑n31 Harris, 446 U.S. at 651-52.

↑n32 48 U.S.C. § 731b (1951).

↑n33 Id. § 731b.

↑n34 See id. § 731d.

↑n35 See Act of July 3, 1952, ch. 567, 66 Stat. 327 (1952).

↑n36 Roman, *supra* note 8, at 27 n.204.

↑n37 See *id.* at 27.

↑n38 See *id.*

↑n39 See *History of Puerto Rico*, *supra* note 8, at *6. Many of those who voted for continuance of commonwealth status apparently believed that they would eventually be granted enhanced rights by Congress. See Roman, *supra* note 8, at 40.

↑n40 See *History of Puerto Rico*, *supra* note 8.

↑n41 See *id.*

↑n42 This information comes from conversations with my faculty colleague, Alberto Bernabe-Riefkohl, a native of **Puerto Rico**, whose personal recollections were enhanced by inquiries to some of his friends. Professor Bernabe-Riefkohl has cautioned that his recollection may not be accurate, or his resources may be wrong. However, he and his sources are consistent with the views of others. See, e.g., Monge, *infra* note 43.

↑n43 Jose Trias Monge, Plenary Power and the Principle of Liberty: An Alternative View of the Political Condition of **Puerto Rico**, 68 Rev. Jur. U.P.R. 1, 19 (1999). There is an interesting question that is beyond the scope of this article: who should vote on the status of **Puerto Rico**? Should the 2.5 million Puerto Ricans living on the mainland (about 1 million in New York City) be allowed to vote? How do you define "Puerto Rican"? Should United States citizens born elsewhere but residing in **Puerto Rico** be allowed to vote? In 1998, the vote was restricted to residents of **Puerto Rico**, thus following the pattern of state elections, where the right to vote depends on residence, not "nationality." See T. Alexander Aleinikoff, **Puerto Rico and the Constitution: Conundrums and Prospects**, 15 Const. Comment. 15, 16 n.3 (1994).

↑n44 There were a few exceptions, where land was acquired by purchase and/or fair treaties, such as Manhattan and Pennsylvania.

↑n45 Alaska had few inhabitants at the time, and little economic value. See Deborah D. Herrera, Unincorporated and Exploited: Differential Treatment for Trust Territory Claimants - Why Doesn't the **Constitution** Follow the Flag?, 2 Const. L.J. 593, 604 n.42 (1992). Later, with the discovery of gold and oil, "Seward's folly" attracted large numbers of immigrants, mostly from the "lower 48," and eventual **statehood** became probable. Much like the other forty-eight states, Alaska became an area with a few "natives" and mostly "Americans."

↑n46 With the Monroe Doctrine in 1823, the United States had staked out its sphere of influence in the rest of the Western Hemisphere, and realized its intent to bar any European intrusion into that entire area.

↑n47 In 1898 and later years, the United States also obtained sovereignty or administrative authority over the Virgin Islands, Samoa, the Marianas and Micronesia, by purchase or by League of Nations or United Nations mandate, etc., but the status and future of these territories is beyond the scope of this article.

↑n48 Roman, *supra* note 8, at 17 (citation omitted). The United States did not annex Cuba. See *supra* note 6.

↑n49 Although Hawaii also had native and Asian inhabitants, its acquisition was primarily due to the influence of immigrants from the United States who dominated the Hawaiian economy. Thus, the Territory of Hawaii was always looked upon as "American."

¶n50 See Jones Act (Philippine Islands), ch. 416, 39 Stat. 545 (1916) (Preamble).

¶n51 See Proclamation No. 2695, 3 C.F.R. 86 (1946), reprinted in 22 U.S.C. § 1394 (1994).

¶n52 See *supra* Part I.E.

¶n53 See *id.*

¶n54 See Torruella, *supra* note 1, at 263; Ediberto Roman, *Empire Forgotten: The United States's Colonization of Puerto Rico*, 42 Vill. L. Rev. 1119, 1180 (1997).

¶n55 See Roman, *supra* note 54, at 1180; Aleinikoff, *supra* note 43, at 42.

¶n56 See Aleinikoff, *supra* note 43, at 21.

¶n57 Benefits are at lower levels and are subject to an overall cap. See *id.*

¶n58 This program provides aid to the aged, disabled and blind.

¶n59 See Aleinikoff, *supra* note 43, at 21.

¶n60 See *id.* More than 60% of Puerto Rican families are below the poverty level, compared to 19.9% in Mississippi, the poorest state. See Monge, *supra* note 43, at 19.

¶n61 See Roman, *supra* note 54, at 41.

¶n62 "According to a 1996 poll, only 25% of the people of **Puerto Rico** consider the United States to be their nation; they see themselves first of all as Puerto Ricans, with a separate Latin American heritage." Monge, *supra* note 43, at 20.

¶n63 See *id.*

¶n64 In the 1998 plebiscite, only 2.5% of the electorate voted for **independence**, down from 4.4% in the 1993 plebiscite. See History of Puerto Rico, *supra* note 8.

¶n65 See Jose Julian Alvarez Gonzalez, *The Empire Strikes Out: Congressional Ruminations on the Citizenship Status of Puerto Ricans*, 27 Harv. J. on Legis. 309, 340 (1990).

¶n66 See Monge, *supra* note 43, at 18.

¶n67 Roman, *supra* note 54, at 1183.

¶n68 For example, as a state, maximum benefits for Puerto Ricans under the Supplemental Security Income program would increase from \$ 32 a month to \$ 368. See Monge, *supra* note 43, at 19.

¶n69 See *id.*

¶n70 See Roman, *supra* note 8, at 46.

¶n71 The Constitutional provision as to **statehood** is remarkably brief: "new States may be admitted by the Congress into this Union." U.S. Const. art. IV, § 3, cl. 2. As to a change in Commonwealth status, since it was created by Congress, it would follow that it could only be changed by Congress.

¶n72 See *id.*

¶n73 See discussion supra Parts II.C & II.D.

¶n74 Torruella, supra note 1, at 152 (quoting 81st Cong., 2d Sess., 96 Cong. Rec. 9595 (1950)).

¶n75 Id. at 152.

¶n76 Id. at 165 (quoting U.N. GAOR, 8th Sess., 459th plen. mtg.).

¶n77 Are there still "third world countries"?!

¶n78 As discussed in Part I.B, some feel that since Congress gave Puerto Ricans citizenship, Congress can take it away.

¶n79 Such things include: (1) obtaining naturalization in a foreign state; (2) making a formal declaration of allegiance to a foreign state; (3) serving in the armed forces of a foreign state if they are engaged in hostilities against the United States, or the person is a commissioned or noncommissioned officer; (4) serving in any office or employment under the government of a foreign state; and (5) making a formal renunciation of nationality. See 8 U.S.C. § 1481 (1994).

¶n80 See Kawakita v. United States, 343 U.S. 717, 723-24 (1952).

¶n81 See Afroyim v. Rusk, 387 U.S. 253 (1967) (voting in foreign election not enough; specific intent to renounce citizenship was not evident).

¶n82 See 8 U.S.C. § 1401.

¶n83 See supra Part I.B.

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