

AT ROCK BOTTOM: PUERTO RICO'S CRISES AND SELF-DETERMINATION

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I. INTRODUCTION

At the moment, Puerto Rico's *de facto* bankruptcy is occupying all three branches of government in the United States.¹ In all likelihood, it will lead them merely to express sympathy, to offer small gestures of support, and to institute short-term mechanisms to assist in the satisfaction of creditor claims. Nonetheless, U.S. authorities might beat all odds, rise to the occasion, appreciate the island's financial woes as a symptom, and tackle the underlying political causes. In other words, they might terminate the prevailing undemocratic and disengaged federal decision-making system, which paved the way for the fiscal collapse in the first place and prevents a purposeful quest for a durable solution. In particular, Congress might acknowledge its own aversion to statehood, as well as that of a plurality of the local population, and work with Puerto Rican representatives toward rendering Puerto Rico genuinely self-governing, as well as capable of deliberately and authoritatively attending to all of the island's difficulties, needs, and possibilities.

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¹ For an introduction to Puerto Rico's political and legal situation, see ÁNGEL R. OQUENDO, *LATIN AMERICAN LAW* 535-41 (3d ed.) (2017).

At the outset, this essay will show in its Part I that U.S. officials decide on the most important Puerto Rican matters not solely undemocratically, but principally taking U.S. interests into account. It will maintain that they have thus contributed to Puerto Rico's socio-economic ails, which have, in turn, led to the current debt debacle. From this perspective, the United States should strive to democratize the island. It may advance such democratization outside, rather than inside, the Union in light of Congressional and insular opposition to the latter option.

Part II will consider and ultimately reject the contention that the existing arrangement violates individual civil rights and that Puerto Rico must become a state in order to vindicate these entitlements. It will stress that no such violation takes place since the treatment of Puerto Ricans does not differ from that of their fellow U.S. citizens. Specifically, anyone bearing the citizenship of the United States can exercise all of the rights in question if she resides on the mainland (or Hawaii), but not on the island (or any other territory, or abroad).

The discussion will then establish that the regime in place encroaches not upon any of the islanders' personal entitlements, but instead upon their collective right to self-determination. Accordingly, vindication may consist in empowering Puerto Rico to rule itself, just as much as in admitting it into the federation. From this standpoint, the U.S. political establishment could simply amend the 1950 statute presently in force and pursue more successfully the same goal: namely, granting the island "self-governance" as an "associated free state."² Within this broad framework, the association could flexibly develop over time toward either more or less cooperation between the parties.

II.

SOCIO-ECONOMIC AND LEGITIMACY CRISES

A. Dysfunctional Breeding Illegitimacy

Politically, Puerto Rico lives under a status that offends fundamental fairness and that hinders the development of its economy or society. It has to abide by laws enacted by a Congress in which it has no regular representation, executed by a President in whose election it does not participate, and interpreted by a judiciary appointed by these same non-representative powers. Ultimately, governmental actors from the mainland rule the island, but they neither regard it as a main concern nor devise policies targeted to improve its lot socially or economically. Predictably, it has entered a seemingly permanent socio-economic and legitimacy crisis.

Naturally, U.S. officials seek to advance, primarily, the United States' interest, which often does not coincide with that of Puerto Rico. As a result, much as they

² See Mireya Navarro, *Puerto Rico Rallies to Vote on Shift in Political Status*, N.Y. TIMES, § A; p. 9; col. 5 (Dec. 12, 1998) ("The commonwealth or 'free associated state' created in 1952 gives Puerto Ricans here American citizenship but denies them equal rights and obligations. It grants the island self-government in local affairs and subjects it to Federal law, like states. But unlike residents in the states, including Puerto Ricans who live in the mainland, Puerto Ricans on the island do not pay Federal taxes, cannot vote on Federal elections or elect Congressional delegations, and they do not receive Federal benefits comparable to those received on the mainland.").

may subsidize the island as a whole, their specific decisions on matters such as crime control, welfare, and commerce frequently end up hurting it. As an illustration, the Border Patrol Agency concentrates more on restraining transnational criminal organizations in Florida than in Puerto Rico, out of fear that a number of them might otherwise shift their operations from the latter to the former location.³ Similarly, the United States' legislature has excluded the island's indigent single mothers from subsidies for their childcare expenses,⁴ and aged, blind, or disabled Social Security beneficiaries from supplemental payments,⁵ evidently in order to spare its own taxpaying constituents.

Sometimes federal legislation undermines, on a unilateral basis, cardinal Puerto Rican values or principles. For instance, it has introduced common law institutions that run counter to the local civil law heritage.⁶ More dramatically, U.S. statutes that provide for the death penalty or for wire-tapping clash with prohibitions in Puerto Rico's own Constitution.⁷

Furthermore, lawmakers on the mainland have contributed to the socio-economic and fiscal meltdown presently under way. First, the elimination of tax

³ See Eugenio Hopgood Dávila, *La isla no es la prioridad*, EL NUEVO DÍAN, Nov. 10, 2011, at 1 (“El Gobierno de Estados Unidos tiene la capacidad para detener la entrada de drogas y armas por las costas de Puerto Rico, pero prefiere no cerrar el paso a esta ruta para evitar que la actividad de crimen y narcotráfico aumente en Florida y en su frontera sur, afirmó ayer un agente federal de la Patrulla Fronteriza”) (“A federal agent of the Border Patrol Agency declared that even though the government of the United States has the capacity to stop drugs and weapons at the coast of Puerto Rico, it prefers not to close down this route because it wants to prevent crime and drug trafficking from increasing in Florida and in its southern border more generally”).

⁴ See *Harris v. Rosario*, 446 U.S. 651, 651-52 (1980) (*per curiam*) (Congress may provide less assistance to Puerto Rico than to the States under “[t]he Aid to Families with Dependent Children program” based on the following “rational” grounds: Puerto Rican residents do not contribute to the federal treasury; the cost of treating Puerto Rico as a State under the statute would be high; and greater benefits could disrupt the Puerto Rican economy.”).

⁵ See *Califano v. Torres*, 435 U.S. 1, 2-4 (1978) (“The exclusion of Puerto Rico” from “the Supplemental Security Income ... program [providing] aid to qualified aged, blind, and disabled persons” does not contravene the “constitutional right to travel.”).

⁶ See OQUENDO, *supra* note 1, at 541-43 (explaining U. S. legislation's common-law distortions on the Puerto Rican civil-law regime). Cf. *Puerto Rico v. Sánchez Valle*, 136 S. Ct. 1863, 1884 (2016) (Breyer, J., dissenting) (“Puerto Rico’s legal system arises out of, and reflects, not traditional British common law ..., but a tradition stemming from European civil codes and Roman law.”); *Díaz v. González y Lugo*, 261 U.S. 102, 105-06 (1923) (Federal courts should keep in mind that Puerto Rican tribunals have “inherit[ed]” and were “brought up in a different system from that which prevails here Our appellate jurisdiction is not given for the purpose of remodeling the Spanish American law according to common law conceptions except so far as that law has to bend to the expressed will of the United States.”).

⁷ See *United States v. Acosta-Martínez*, 252 F.3d 13, 20 (1st Cir. 2001) (“We thus conclude that Congress intended the death penalty to apply to these federal criminal prosecutions in Puerto Rico. The death penalty is intended to apply to Puerto Rico federal criminal defendants just as it applies to such defendants in the various states. This choice by Congress does not contravene Puerto Rico’s decision to bar the death penalty in prosecutions for violations of crimes under the Puerto Rican criminal laws in the Commonwealth courts.”); *id.* (“[T]he federal wiretapping statute, which authorizes and controls the use of wiretaps, applies to Puerto Rico despite an express provision in the Constitution of Puerto Rico prohibiting wiretaps.”) (citing *United States v. Quiñones*, 758 F.2d 40, 41-43 (1st Cir. 1985)); CONST. (P.R.) (1952) art. II, § 7 (“There shall be no death penalty.”); *id.*, § 10 (“There shall be no interception of telephone communications.”).

exemptions for U.S. corporations' subsidiaries based on the island, as part of the broader battle against corporate subsidization, triggered the initial downturn in business activity.⁸ Secondly, federal lawmakers have hampered Puerto Rico in coping with its devastating deficits by barring it from empowering its public enterprises to declare themselves bankrupt.⁹

From a more general standpoint, U.S. enactments do not intrinsically aim to profit the insular economy and therefore do so, if at all, only incidentally. In fact, a few of them actually thwart it from competing with its counterparts elsewhere in the region, and, accordingly, from attracting investment, growing, and reducing the unemployment rate, which has stubbornly hovered over ten percent throughout the years,¹⁰ as well as poverty, which affects more than forty percent of the population.¹¹ For example, the federal minimum wage, which started applying to Puerto Ricans in the 1970s, tends to raise the local cost of production to first-world standards.¹² So does the Merchant Marine (Jones) Act, which exclusively permits vessels "wholly owned" by individuals, companies or governmental entities from the United States to "engage in trade" in Puerto Rico, or anywhere else in U.S. territory.¹³

Consequently, even the White House's proposed emergency measures--which would have awarded insular municipalities and utilities bankruptcy relief, extended to Puerto Ricans "the earned-income tax credit," and expanded Medicaid--might have bought precious time,¹⁴ but would have not addressed the root problem. The

⁸ Lizette Álvarez, *Economy and Crime Spur New Puerto Rican Exodus*, N.Y. TIMES, Feb. 9, 2014, at A1 ("Tax laws were once abundantly generous, which fueled the spread of factories that made textiles and pharmaceuticals, among other things. That came to a crash in 2006, after the 10-year phaseout of a subsidy that provided American firms operating in Puerto Rico with tax-free income.").

⁹ See *Franklin Cal. Tax-Free Trust v. Puerto Rico*, 805 F.3d 322, 324 (1st Cir. 2015) ("Puerto Rico, unlike states, may not authorize its municipalities, including these utilities, to seek federal bankruptcy relief under Chapter 9 of the U.S. Bankruptcy Code.").

¹⁰ Since 1976, the rate dipped below ten percent only from July to November, 2000, when it fluctuated between 9.9 and 9.7 percent. See Bur. Lab. Stats. Data, P.R. Unemployment Stats. 1976-2016 (on file with the author).

¹¹ ALEMAYEHU BISHAW & KAYLA FONTENOT, U.S. CENSUS BUREAU, *Poverty: 2012 and 2013*, ACSBR/13-01 3 (Sept. 2014) (on file with the author).

¹² See Árida J. Castillo-Freeman & Richard B. Freeman, *When the Minimum Wage Really Bites: The Effect of the U. S.-Level Minimum on Puerto Rico* (Ch. 6), in IMMIGRATION AND THE WORKFORCE: ECONOMIC CONSEQUENCES FOR THE UNITED STATES AND SOURCE AREAS 177, 177 (George J. Borjas & Richard B. Freeman, eds. 1992) ("In 1974, the U.S. Congress, supported by the Puerto Rican government, initiated a policy to raise the level and coverage of federally mandated minimum wages on the island to U.S. standards."); *id.* at 178 ("Imposing the U.S.-level minimum reduced total island employment by 8-10 percent compared to the level that would have prevailed had the minimum been the same proportion of average wages as in the United States. In addition, it reallocated labor across industries, greatly reducing jobs in low-wage sectors that had to raise minima substantially to reach federal levels.").

¹³ 46 U.S.C. §§ 12102-12103 (2012).

¹⁴ See generally Mary Williams Walsh, Michael Corkery, & Julie Hirschfeld Davis, *White House Devises Plan to Help Puerto Rico*, N.Y. TIMES, Oct. 23, 2015, at B1 ("The legislation introduced so far would make bankruptcy relief available ... to Puerto Rico's municipalities and its government enterprises") ("The administration is also proposing to extend the earned-income tax credit, a refundable credit for the working poor that is payable even to people who earn too little to owe income tax. It is not currently available in Puerto Rico.") ("Administration officials who detailed the proposal offered no ... cost projection for the Medicaid expansion.").

statute ultimately approved just ignores these proposals and narrow-mindedly focuses on instituting an “Oversight Board ... to provide a method for a covered territory to achieve fiscal responsibility and access to the capital markets.”¹⁵ Of course, it also creates “a Congressional Task Force on Economic Growth in Puerto Rico,”¹⁶ but makes no commitment to embrace any of the recommendations proffered.

Needless to say, the island’s leadership itself bears substantial responsibility for the debt debacle, as well as for any inter-related societal ails.¹⁷ Yet it does not have the last word on Puerto Rican affairs and obviously cannot remove federally imposed constraints. Besides, no governor has achieved reelection to the insular governorship since 2001, and no party has since 2005.¹⁸ Hence, the extreme budgetary and other troubles have persisted independently of the identity, affiliation, or level of competence of those who hold the reins of local power.

In sum, the authority exercised by the United States over Puerto Rico is both illegitimate and a source of deep dysfunctions. As such, it has played a non-negligible role in bringing the island into its decade-long recession and current effective insolvency. To be sure, the overarching illegitimacy and dysfunctionality have been around since the U.S. invasion in 1898. Nevertheless, they seemed to recede with the original move toward decolonization and self-governance in the aftermath of the Second World War, only to return, with a vengeance, in the twenty-first century.

B. The Federal Leadership’s Paralysis

Ordinarily, one would expect the presidents of the United States to take the lead on such a grave issue. However, they never have, at least not in recent history. Oddly enough, national political party rules may explain, in part, this lack of initiative. Specifically, they have entitled Puerto Ricans, who have retained their U.S. citizenship since acquiring it in 1917,¹⁹ to cast a vote in presidential primaries since 1980.²⁰ As a result, a candidate must first campaign in the island on her way to the

¹⁵ Puerto Rico Oversight, Management, and Economic Stability Act, 114 P.L. 187, tit. I, § 101(a), 130 Stat. 549, 557 (2016).

¹⁶ *Id.*, tit. IV, § 409(a).

¹⁷ See Editorial, *Save Puerto Rico Before It Goes Broke*, N.Y. TIMES, Oct. 25, 2015, at SR8 (“There is no doubt that Puerto Rican leaders have mismanaged the island’s finances and economy.”).

¹⁸ Lizette Álvarez, *Puerto Rico’s Embattled Governor Says He Won’t Run for 2nd Term*, N.Y. TIMES, Dec. 15, 2015, at A16 (“In rejecting a run for a second term, Mr. García Padilla, a member of the Popular Democratic Party, which supports continued commonwealth status, joins a line of governors from the two leading parties who have served only one term since the island sank into a decade-long recession. His two predecessors lost re-election after voters disapproved of their handling of the economic crisis, among other things.”).

¹⁹ Jones Act, ch. 145, §§ 25-28, 39 Stat. 951, 958-59 (1917).

²⁰ See *Agosto v. Aponte Roque*, 631 F. Supp. 1082, 1095-1096 (D.P.R. 1986) (“Although the citizens of the United States residing in Puerto Rico do not vote directly for the President, they vote in the primaries of the Republican and Democratic parties.”); Marc D. Charney, *GOP Primary in Puerto Rico*, ASSOCIATED PRESS, Feb. 16, 1980 (“The U.S. presidential primaries open Sunday among Republicans on this Caribbean island Island Democrats hold a separate primary March 16 The law allowing the primaries was passed by the pro-statehood government led by Gov. Carlos Romero Barceló and his

White House. She must try to secure the endorsement of insular voters who choose to partake in U.S. politics and who presumably identify either with the pro-statehood New Progressive Party or with the more conservative wing of the pro-commonwealth Popular Democratic Party. At the end of the day, she will typically make a generic pledge to honor the will of the local electorate and, implicitly, to avoid any alteration of the *status quo*.²¹

The Congress, in turn, never really confronts Puerto Rico's situation head on. It merely deliberates and votes, initially in committees and then in plenary session, on whether to include the island in particular laws or programs, like Medicare or Medicaid. Since the 1950s, federal lawmakers have built the relationship with Puerto Rico piecemeal through these discrete determinations. They have not approached it as they would that with any foreign country, namely, by projecting it into the future and assessing its importance in a direct and deliberate manner.

Granted, the Senate's Committee on Energy and Natural Resources, in charge of "Territorial Possessions,"²² possesses comprehensive jurisdiction over Puerto Rico. So does the House's Natural Resources Committee, which is responsible for "insular areas."²³ Still, these deliberative bodies solely oversee the island as a territory and usually do not purport to rethink, much less transform, its political condition.

However, all of these structural impediments to far-reaching action cannot fully account for the long-lasting standstill. Nor can Puerto Rico's overall low ranking on the list of U.S. priorities. In reality, the authorities on the mainland seem to have purposely undertaken the path of avoidance. After all, they have not seriously dealt with the island's status since 1952 and have never convoked a referendum on it since taking over Puerto Rico at the twilight of the nineteenth century.

The U.S. political establishment occasionally attempts to justify its inaction by pointing to the disagreement among Puerto Ricans on their ties with the mainland.²⁴

New Progressive Party.").

²¹ See Nick Corasaniti, *Race Pulls Candidates to an Increasingly Important Puerto Rico*, N.Y. TIMES, Sept. 5, 2015, at A14 (Hillary Clinton "did take the same position as Mr. Rubio on potential statehood, saying that should Puerto Ricans vote for it, she would stand with them."); Helene Cooper, *In Visit to Puerto Rico, Obama Offers (and Seeks Out) Support*, N.Y. TIMES, June 15, 2011, at A14 ("Mr. Obama began his four-hour trip [to Puerto Rico] with a quick speech in which he ... professed his love and admiration for all things Puerto Rican and promised to support 'a clear decision' by the people of Puerto Rico on statehood, whatever it may be.").

²² See R. XXV(g)(1)(16), STANDING R. S. 22 (Revised January 24, 2013) ("Standing Committees") ("Committee on Energy and Natural Resources") ("Territorial Possessions of the United States").

²³ See R. X(1)(m)(9), R. H.R. 8 (One Hundred Fourteenth Congress) (January 6, 2015) ("Organization of Committees") ("Committee on Natural Resources") ("INSULAR areas of the United States generally").

²⁴ See *Puerto Rico Consensus Urged*, ORLANDO SENTINEL, Apr. 10, 2001, at A11 ("Puerto Ricans need to come to some agreement on the territory's status with the United States before approaching the U.S. Congress for support on the issue, Rep. Luis Gutiérrez said Monday 'The absence of consensus is what has brought about Congress' inaction.'"). See generally Chris Mooney, *Treasure Island; Puerto Ricans Can't Vote for Congress or the Presidency. But They Can Write Checks. A Case Study of What Happens When Politics Is All Money and No Voters*, AM. PROSPECT, Sept. 25, 2000, at 51, 53 ("In the end, the internecine struggles between Puerto Rico's factions prevent a consensus on the most basic definitions of the island's choices. And such lack of agreement on terms is a tried and true recipe for congressional inaction.").

Nonetheless, this rationalization misses the mark on three grounds. First, there is indeed an overwhelming, almost unanimous, feeling in Puerto Rico that the United States ought to authorize a plebiscite.²⁵ Secondly, the federal government could itself facilitate the formation of a substantive consensus by spelling out what options it would endorse, placing them on a ballot, and committing to respect the people's choice.²⁶ Finally, Puerto Ricans agree on the essentials of United States-Puerto Rico relations. All three principal political movements not only reject the undemocratic arrangement in force but also posit maintaining robust economic, civic, and military bonds with the United States and considerable control over most other matters, including national culture and language.²⁷ In the final analysis, they disagree merely on whether the island should participate in this kind of relationship as a state, an enhanced commonwealth, or a sovereign nation.²⁸

In consequence, U.S. representatives must hold themselves accountable for the absence of full democracy, as well as for the partly ensuing socio-economic stagnation and fiscal breakdown. They could help toward a solution on both fronts by supporting one of two relatively straightforward courses of action. On the one hand, the United States could welcome the island into the Union and collaborate with the subsequently elected state officials to promote the insular society and economy. On the other hand, it could devolve powers to Puerto Rico--whether as a commonwealth, an associated republic, or an independent country--and aid the local regime in carrying out similar developmental objectives. Embarking upon either path would end the illegitimacy in place and allow a focused effort to develop the island socio-economically.

C. U.S. Aversion to Statehood and Interest in an Alternative

In all likelihood, federal authorities have been looking the other way all this time

²⁵ See Editorial, *Lott Should Get Out of the Way, Let Puerto Ricans Vote on Future*, SUN-SENTINEL (Fort Lauderdale), May 15, 1998, at A22 ("A recent poll shows 97 percent of Puerto Ricans want a chance to vote on their political status. On the mainland, 63 percent of American voters favor a referendum in Puerto Rico, a stunningly high figure."). In the most recent non-binding plebiscites in 2012 and 1998, the local participation rate amounted to 78.2 and 71.6 percent, respectively. STATE ELECTORAL COMM'N, STATE ELECTORAL COMM'N, *Non-Territorial Options*, GENERAL ELECTIONS 2012 AND PLEBISCITE ON PUERTO RICO POLITICAL STATUS (2012) (on file with the author); STATE ELECTORAL COMM'N, *Totales Isla*, PLEBISCITO 1998 (1998) (on file with the author).

²⁶ See Chris Mooney, *Treasure Island; Puerto Ricans Can't Vote for Congress or the Presidency. But They Can Write Checks. A Case Study of What Happens When Politics Is All Money and No Voters*, AM. PROSPECT, Sept. 25, 2000, at 51, 53 (Congress must provide Puerto Rican's with a binding vote on the island's status in order to allow Puerto Rican citizens to arrive at a consensus and allow them to "resolve their most basic question in the manner of a functioning democracy.").

²⁷ See generally Ángel R. Oquendo, *Liking to Be in America: Puerto Rico's Quest for Difference Within the United States*, 14 DUKE J. COMP. & INT'L L. 249 (2004) (arguing that Puerto Ricans and their main political parties aim to keep control over their own national culture and language, as well as to hold on to their economic, civic, and military ties to the United States).

²⁸ See generally Mireya Navarro, *Puerto Rico Rallies to Vote on Shift in Political Status*, N.Y. TIMES, Dec. 12, 1998, at A9 ("Puerto Ricans remain at odds over whether to cement their ties with the United States with statehood or seek more autonomy, but most are united in holding on to three elements of their identity--Spanish language, Latin American culture and American citizenship.")

because they find Puerto Rican statehood unappetizing.²⁹ Today, they may very well perceive the island as a financial basket case, hardly worthy of extensive assistance with its disastrous finances, let alone of inclusion in the federation. More broadly, the official reluctance on the latter possibility rests on grounded concerns about long-term costs beyond those related to the insular debt,³⁰ about partisan or national political consequences,³¹ and about the challenges of integrating a Latin American, Spanish-speaking, underdeveloped territory into an Anglo-American, English-speaking, highly industrialized nation.³² In 1991, various Republican and Democratic Senators, while serving on the panel that killed a bill sanctioning a federally sponsored referendum and resembling one previously passed by the House of Representatives,³³ voiced opposition along these lines to incorporating the island into the Union.³⁴ During a similar endeavor in 1998, when the House narrowly

²⁹ Congressman Luis Gutiérrez has declared the Congress will never grant Puerto Rico statehood. Luis Gutiérrez, Opinion, *El Congreso jamás concederá la estidadad*, EL NUEVO DÍA, Feb. 10, 2017. See also Lance Oliver, 3 Options--But No Clear Choice--for Island's Future, ORLANDO SENTINEL, May 25, 1997, at A8 ("Statehooders also face nagging questions about whether statehood would be granted even if a majority of Puerto Ricans voted in favor of it.").

³⁰ See Lance Oliver, 3 Options--But No Clear Choice--for Island's Future, ORLANDO SENTINEL, May 25, 1997, at A8 ("Some members of Congress ... say statehood would be too expensive because of the additional \$3 billion to \$4 billion in federal aid the island would receive.").

³¹ "Puerto Rico statehood would require approval from Congress, where it would face a tough fight because the territory is considered to lean Democratic and it would have two senators and five representatives if it became a state. But it could be hard for Congress to block it if a strong majority of Puerto Ricans demonstrated support for joining the union." Danica Coto, *Puerto Rico Statehooders See Opportunity as Woes Deepen*, ASSOCIATED PRESS (Aug. 24, 2015). Likewise, federal lawmakers might resist simply because the local population, which exceeds that of twenty-one states, would entitle the island to a relatively large representation and to substantial power in mainland politics. See U.S. CENSUS BUREAU, *Visualization & Table, Population by State, 2015 Population Estimates* (on file with the author).

³² See Mireya Navarro, *Puerto Rico Rallies to Vote On Shift in Political Status*, N.Y. TIMES, Dec. 12, 1998, at A9 ("Congress ... is sharply divided over whether to accept Puerto Rico as a possible state, and previous bills on self-determination have bogged down on questions about the political, cultural and economic cost of incorporating an island with 3.8 million Latin Americans as the 51st state."); Lance Oliver, 3 Options--But No Clear Choice-- for Island's Future, ORLANDO SENTINEL, May 25, 1997, at A8 ("Some members of Congress oppose admitting a Spanish-speaking state").

³³ See Robert Pear, *House Votes Bill for Puerto Rico to Decide Status*, N.Y. TIMES, Oct. 11, 1990, at A1.

³⁴ Martin Tolchin, *Senate Panel Derails Bill on Puerto Rico Referendum*, N.Y. TIMES, Feb. 28, 1991, at A22 ("Some Senate Republicans feared that a Puerto Rican state would send an overwhelmingly Democratic delegation to Congress. Both Democrats and Republicans questioned the expense of a Puerto Rican state in which most of the population would qualify for welfare benefits. And some feared that Puerto Rican statehood would give momentum to a campaign to grant statehood to the District of Columbia."); Martin Tolchin, *Moynihan Tries to Save Puerto Rico Referendum*, N.Y. TIMES, Feb. 22, 1991, at A18 ("Senators at Wednesday's hearing expressed concern about the costs of Puerto Rican statehood, noting that a majority of the population would qualify for welfare benefits. They also questioned whether Puerto Rico, with its own culture, language and tradition, was ready to become fully a part of the United States."); Martin Tolchin, *Prospects Dim on Bill for Puerto Rico Referendum*, Feb. 21, 1991, at B7 ("Although President Bush supports statehood for Puerto Rico, a growing number of Republicans in Congress fear that a Puerto Rican state would send an overwhelmingly Democratic delegation to Congress. And in the Senate, both Democrats and Republicans fear the expense of a Puerto Rican state in which a majority of the population would qualify for welfare benefits.").

managed to press forward,³⁵ while the Senate, once again, stalled,³⁶ essentially the same misgivings pervaded the debate throughout.³⁷

Of course, the United States does not have to accept Puerto Rico as a state. It has never committed to doing so and explicitly disclaimed any such commitment over six decades ago when it approved the process that generated the island's Constitution.³⁸ In addition, no country bears an automatic legal or moral duty to incorporate external territories into its own at the request of the local population.

As the crisis intensifies, Puerto Ricans might at some point come to favor statehood by a clear or even commanding majority, instead of the approximately forty-six percent margin registered in the two locally organized, non-binding plebiscites that took place in the 1990s,³⁹ or the slightly lower percentage apparently arrived at in a confusing 2012 local referendum.⁴⁰ In the face of ever-mounting

³⁵ See Lizette Álvarez, *House Approves Measure on Self-Determination for Puerto Rico*, N.Y. TIMES, Mar. 5, 1998, at A24. (“In a cliffhanger roll-call, the House tonight passed a bill by only one vote, 209 to 208, that would let Puerto Ricans vote on their island’s destiny--statehood, independence or continued commonwealth status--a delicate and hotly debated question on the Caribbean island. The self-determination bill would pave the way for a Congressionally approved referendum in Puerto Rico. If Puerto Ricans choose statehood, the legislation would compel Congress to vote as early as 1999 on whether to begin the process. Congress would then have no more than 10 years to vote on admitting Puerto Rico to the union.”).

³⁶ See Mireya Navarro, *Looking Beyond Vote in Puerto Rico After ‘None of the Above’ Is Top Choice*, N.Y. TIMES, § A; p. 16; col. 1 (Dec. 15, 1998, at A16 (“A bill that set the terms for such a vote was approved by the House this year but stalled in the Senate”).

³⁷ See Lizette Álvarez, *House Approves Measure on Self-Determination for Puerto Rico*, N.Y. TIMES, Mar. 5, 1998, at A24. (“Some conservatives, who believe that the measure will lead to statehood, worried about the costs and the language differences, and opposed the bill because they did not believe that a majority of Puerto Ricans support statehood There was also concern about the impact the measure would have on the size of Democratic Congressional delegations, who may have to accommodate six new members if Puerto Rico becomes a state.”).

³⁸ See S. Rep. No. 81-1779, at 5 (1950) (“Let me say that enactment of S. 3336 will in no way commit the Congress to the enactment of statehood legislation for Puerto Rico in the future. Nor will it in any way preclude a future determination by the Congress of Puerto Rico’s ultimate political status.”); H.R. Rep. No. 81-2275, at 3 (1950) (“This bill does not commit the Congress, either expressly or by implication, to the enactment of statehood legislation for Puerto Rico in the future. Nor will it in any way preclude a future determination by the Congress of Puerto Rico’s ultimate political status.”).

³⁹ “Statehood lost [in 1998] to ‘none of the above’ 46.5 percent to 50.2 percent but won over three other status options--independence, which received 2.5 percent of the vote, and the boycotted commonwealth and ‘free association,’ which each got less than 1 percent. Free association was defined on the ballot as a form of independence that delegates certain powers, such as defense, to the United States under treaties.” Mireya Navarro, *Looking Beyond Vote in Puerto Rico After ‘None of the Above’ Is Top Choice*, N.Y. TIMES, Dec. 15, 1998, at A16. “In a 1993 referendum statehood lost to commonwealth, 46 percent to 48 percent. The third option, independence, got 4 percent.” Mireya Navarro, *Puerto Rico Rallies to Vote on Shift in Political Status*, N.Y. TIMES, Dec. 12, 1998, at A9.

⁴⁰ “Puerto Rico held a nonbinding, two-part referendum in November 2012 that was widely criticized for being confusing. On the ballot’s first question, more than 900,000 voters, or 54 percent, said they were not content with the current commonwealth status. A second question asked voters to choose a status. Of the approximately 1.3 million voters who made a choice, nearly 800,000, or 61 percent, supported statehood. Some 437,000 backed sovereign free association and 72,560 chose independence. However, nearly 500,000 left that question blank.” *Puerto Rico Gov Pledges New Plebiscite on Status*, ASSOCIATED PRESS, July 16, 2014. Exactly 834,191 voters out of the 1,878,969 who participated in the referendum, or 44 percent, supported making Puerto Rico a state. See STATE ELECTORAL COMM’N, *Non-Territorial Options, General Elections 2012 and Plebiscite on Puerto Rico Political Status (2012)*

insular taxes, governmental cutbacks, joblessness, destitution, and hopelessness, they might feel increasingly tempted by the hefty hike in transfer payments from which they would benefit by joining the federation.⁴¹ In the meantime, the hundreds of thousands of islanders who have been migrating to the mainland since 2006 have been figuratively voting with their feet, by pursuing the quickest route to life in an entirely integrated state.⁴²

With the projected shift in preferences of the Puerto Ricans who stay behind, the pressure on U.S. authorities to concede Puerto Rico statehood would likely increase. Needless to say, it would ultimately have to stem not from the disenfranchised local citizenry, but, rather, from the exponentially expanding electorate of Puerto Rican and, more generally, Latin American origin on the mainland.⁴³ In response to a possibly upcoming desperate insular request for admission into the Union, Congress might eventually face the dilemma of either balking, for the reasons referred to earlier, or reluctantly yielding to the wishes of a significant sector of its constituency. It could escape this predicament altogether by proactively exploring legitimate and functional alternatives to statehood.

III.

CIVIL RIGHTS OR SELF-DETERMINATION?

A. Equal Individual Treatment

At this juncture, some Puerto Ricans might object that the U.S. government has an obligation to admit the island as a state. They might insist that only through such admission will they come to attain the civil rights that they now lack. From this perspective, pushing Puerto Rico farther away from the United States would add insult to injury. In other words, it would amount to responding to the denial of certain entitlements by denying others.

While this objection has some appeal, it eventually fails to persuade. To be sure, islanders do not enjoy all of the rights of citizenship. However, their lot does not really diverge from that of any other similarly situated U.S. citizen, whether on the island or the mainland. In truth, the existing arrangement violates collective, rather than individual, democratic entitlements. A process of external, as well as internal,

(on file with the author).

⁴¹ See, e.g., U.S. GOV'T ACCOUNTABILITY OFFICE GAO-14-31, PUERTO RICO: INFORMATION ON HOW STATEHOOD WOULD POTENTIALLY AFFECT SELECTED FEDERAL PROGRAMS AND REVENUE SOURCES (*Highlights*) 23 (2014) (estimating a minimum yearly increase of over \$400 million in Medicare and \$1.4 billion in Supplemental Security Income (SSI)).

⁴² See Lizette Álvarez, *Anxiety Builds as Puerto Ricans Face Debt Crisis*, N.Y. TIMES, § A; p. 1; col. 0 (July 4, 2015) ("Many ... in Puerto Rico, including a stream of professionals and middle-class workers, ... have moved to the mainland for jobs and better prospects. Over the past decade, Puerto Rico has lost more than 5 percent of its population, which now numbers 3.6 million, according to a New York Federal Reserve report. An additional 250,000 people are expected to leave by 2020, according to the Puerto Rico Planning Board.")

⁴³ See Lizette Álvarez, *In Push for Puerto Rico Vote, Conservative Bent Is Stressed*, N.Y. TIMES, § A; p. 1; col. 5 (July 23, 1998) ("Republican pollsters and consultants have advised party members to seize on the issue of Puerto Rican self-determination, saying it is a natural for Hispanic voters and one that tracks with the party's support of statehood.")

self-determination would appropriately remedy the violation.

Puerto Ricans seem to hold a second-class citizenship because they do not possess the same political, economic, and social rights as the rest of the U.S. citizenry. This situation almost inevitably calls to mind that denounced by African Americans in their quest for equal respect, most effectively in the 1950s and 1960s. It might awaken a comparable sense of outrage and solidarity.

Indeed, the population of Puerto Rico does not participate in the communal life of the United States on a par with its counterpart up north. As already observed, it does not vote for the President or send a regular delegation to Congress. Moreover, islanders do not profit from all of the federal programs relating to welfare, infrastructure, and so forth to the extent that mainlanders do.

Of course, these two types of unequal treatment take place with the endorsement of the U.S. Court of Appeals for the First Circuit and the Supreme Court, respectively.⁴⁴ Still, they sound offensively discriminatory offhand. In fact, Judge Juan Torruella has dissented from the former tribunal and supported issuing a declaratory judgment against the refusal of the franchise to Puerto Ricans in federal elections.⁴⁵ He has declared: “The indefinite disenfranchisement of the United States citizens residing in Puerto Rico constitutes a gross violation of their civil rights as guaranteed by the Fifth Amendment and by international treaties to which our Nation is a signatory.”⁴⁶

The overall exemption of islanders from federal income tax could hardly excuse this apparently crass iniquity.⁴⁷ Most of them would owe the Internal Revenue Service little anyway in light of the previously mentioned high unemployment and poverty rates. Better-off taxpayers, for their part, presently pay about the same share of their income in taxes as they would in a state.⁴⁸ In any event, no kind of fiscal compensation could possibly justify an encroachment upon someone’s fundamental rights.

⁴⁴ See *Harris v. Rosario*, 446 U.S. 651, 651 (1980) (*per curiam*) (“[T]he lower level of AFDC [Aid to Families with Dependent Children] reimbursement provided to Puerto Rico [does not violate] the Fifth Amendment’s equal protection guarantee.”); *Califano v. Torres*, 435 U.S. 1, 1-2 (1978) (Paying “[c]ertain benefits under the Social Security Act ... only to residents of the United States, [to the exclusion] of Puerto Rico is [not] unconstitutional.”); *Igartúa de la Rosa v. United States*, 626 F.3d 592, 594 (1st Cir. 2010) (“The panel is unanimous in agreeing that the U.S. Constitution does not give Puerto Rico residents the right to vote for members of the House of Representatives because Puerto Rico is not a state.”); *Igartúa de la Rosa v. United States*, 32 F.3d 8, 9 (1st Cir. 1994) (The “inability [of Puerto Ricans] to vote in the United States presidential election [does not violate] their constitutional rights.”).
⁴⁵ *Igartúa de la Rosa v. United States*, 386 F.3d 313, 320 (1st Cir. 2004) (Torruella, J., dissenting) (“I would reverse the judgment of the district court and remand for the entry of a declaratory judgment consistent with the views expressed by me and stating that the United States has failed to meet its obligations under Article 25 of the [International Covenant on Civil and Political Rights].”).

⁴⁶ *Id.* at 317.

⁴⁷ See *Lugo-Velázquez v. Stiefel Labs., Inc.*, 522 F.3d 96, 99 (1st Cir. 2008) (“[R]esidents of Puerto Rico with only local income do not pay federal income tax.”); *Bergersen v. Comm’r*, 109 F.3d 56, 58 (1st Cir. 1997) (“[R]esidents of Puerto Rico are exempt from U.S. income tax on income derived from Puerto Rico sources.”).

⁴⁸ See U.S. GOV’T ACCOUNTABILITY OFF., GAO-06-541, PUERTO RICO: FISCAL RELATIONS WITH THE FEDERAL GOVERNMENT AND ECONOMIC TRENDS DURING THE PHASEOUT OF THE POSSESSIONS TAX CREDIT 111 (May 2006) (on file with the author) (“Taxes as a share of personal income are about the same in Puerto Rico and the states”).

All the same, Puerto Ricans who might cry “foul” along these lines do not actually have much of a leg to stand on. The United States does not treat them any differently than it does anybody else who bears its citizenship. It simply considers the island to lie outside the Union and, therefore, does not offer any of its citizens who reside there the whole panoply of entitlements that it assures those with residence on the mainland. Islanders cannot credibly allege discrimination.

An examination of how the scheme in question impinges upon concrete individuals corroborates this conclusion. On the one hand, when a Minnesotan moves to Puerto Rico, she can no longer exercise a significant number of locally inapplicable federal rights. On the other hand, a Puerto Rican who settles in Minnesota automatically acquires all of these entitlements. The United States makes absolutely no distinction regarding these two persons.

Consistently, any U.S. citizen who relocates from the United States to a foreign country loses many of the federal rights she held in her previous domicile. For example, U.S. expatriates in France, somewhat like their counterparts in Puerto Rico, do not benefit from numerous entitlements ordinarily entailed by citizenship. Naturally, they cannot themselves any more convincingly complain about the situation.⁴⁹

A U.S. citizen who takes up residence on the island and another one who does as much abroad retain only those entitlements that Congress opts to preserve for them and that may differ in the two cases. For instance, only the latter person may vote for candidates to federal office under the 1986 Uniformed and Overseas Citizens Absentee Voting Act.⁵⁰ According to the Second Circuit, the statute does not cover the former and does not thereby infringe upon “his constitutional rights to vote and travel, [or] his rights under the Privileges and Immunities and Due Process Clauses.”⁵¹ The tribunal upheld the enactment with the following reasoning:

Congress thus extended voting rights in the prior place of residence to those U.S. citizens who by reason of their move outside the United States would otherwise have lacked any U.S. voting rights, without similarly extending such rights to U.S. citizens who, having moved to another political subdivision of the United States, possess voting rights in their new place of residence.⁵²

Interestingly, while campaigning in the island for the Democratic presidential nomination in 2016, Hillary Clinton “released a statement ... saying all U.S. citizens should have the right to vote for president regardless of where they live.”⁵³

⁴⁹ With respect to the right to vote in federal elections, the “situation [of a New Yorker who moves to Puerto Rico] is not materially different from that of a New York citizen, prior to the passage of the UOCAVA, who decided to leave New York to reside in France.” *Romeu v. Cohen*, 265 F.3d 118, 126 (2d Cir. 2001).

⁵⁰ States must “permit absent ... overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office.” 52 U.S.C. § 20302(a)(1).

⁵¹ *Romeu v. Cohen*, 265 F.3d at 120 (2d Cir. 2001).

⁵² *Id.* at 125.

⁵³ Danica Coto, *Sen. Bernie Sanders Visits Puerto Rico Amid Debt Crisis*, ASSOCIATED PRESS, May 17,

Contrariwise, Puerto Rico relocates may continue exercising various federal entitlements not available to their foreign counterparts. For example, they receive many U.S. subventions doled out exclusively domestically, such as Head Start,⁵⁴ or Disaster Relief.⁵⁵ Congress enjoys considerable discretion in deciding whether or not to guarantee these social-welfare or social-insurance rights, as well as suffrage in elections for the White House, outside the United States.⁵⁶

Of course, an islander might protest that she, as opposed to a mainlander, must leave her home to secure the totality of her federal entitlements. Still, U.S. officials could dig in their heels and explain that she must do so solely because she does not live in the United States. They might point out that a U.S. expatriate abroad faces a similar predicament and should not take it personally either.

As a worthy but ultimately futile final attempt, Puerto Ricans might assert a disparate impact claim. Hence, they might contend that while the deprivation at stake affects a few mainlanders domiciled on the island, it disproportionately burdens them, as a protected class. Of course, arguments of this sort technically apply only to an anti-discrimination statute, such as Title VII of the 1964 Civil Rights Act, not to the Equal Protection Clause, which officially necessitates proof of intentional discrimination,⁵⁷ let alone to the territorial context, in which the government must simply articulate “a rational basis for its actions.”⁵⁸ More importantly, they serve to

2016.

⁵⁴ Head Start Act, 42 U.S.C. § 9835(a)(2)(A) (2012) (“The Secretary shall determine an amount for each fiscal year for each State”); § 9832(25) (“The term ‘State’ means a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.”)

⁵⁵ The Stafford Act, 42 U.S.C. § 5122(1) (2012) (“‘Emergency’ means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.”); § 5122(2) (“‘Major disaster’ means any natural catastrophe ..., or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance.”); § 5122(3) (“‘United States’ means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.”).

⁵⁶ See, e.g., *Califano v. Aznavorian*, 439 U.S. 170, 177 (1978) (A statute that “withdraws a governmental benefit during and shortly after an extended absence from this country” does not violate the Constitution. “Unless the limitation imposed by Congress is wholly irrational, it is constitutional in spite of its incidental effect on international travel.”). See also *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991) (“[T]he protections of Title VII [do not] apply to United States citizens employed by American employers outside of the United States.”) (“We assume that Congress legislates against the backdrop of the presumption against extraterritoriality.”).

⁵⁷ See generally *Romeu v. Cohen*, 265 F.3d 118, 133 n.4, 134 (2d Cir. 2001) (John M. Walker, Jr., C.J., concurring) (“It could be argued that because a large segment of the population of the territories is Latino, black, or of Pacific Islander or Asian extraction, the exclusion of U.S. citizens residing in the territories from the vote for electors to the electoral college therefore has a disproportionately discriminatory effect Of course, ... neither the Fourteenth Amendment nor the Fifteenth Amendment proscribes ‘discriminatory effects.’ Only intentional discrimination is barred by these amendments.”) (“[T]he denial of the vote to the territories, regardless of the disparate effects it may have, is not an *intentional* denial of the vote by the states.”) (“[T]he exclusion of the territories from the presidential selection process is a deliberate product of our Constitution.”).

⁵⁸ *Harris v. Rosario*, 446 U.S. 651, 651-52 (1980) (*per curiam*) (“Congress ... may treat Puerto Rico differently from States so long as there is a rational basis for its actions.”)

establish a discriminatory practice against a group, in contradistinction to individuals. Consequently, a Puerto Rico citizen might thus show a breach of her jointly shared, rather than personal, entitlements.

B. Deprivation of Democracy

In actuality, the regime in place discriminates against Puerto Ricans as a community and tramples upon their communal rights. It does so directly, not by disparately impacting upon them. After all, islanders do not live in democracy. They may not democratically shape the supreme law of their land. The executive, legislative, and judicial branches of the U.S. government operate there as external forces.

In consequence, Puerto Rico can decry an infringement not upon civil rights, but, instead, upon elemental democratic principles. It can and should demand respect for its people's collective, not individual entitlements. Specifically, Puerto Ricans can and should struggle to vindicate their right to self-determination, *i.e.*, to determine their own destiny by, at the very least, playing a role in the selection of the men and the women who supremely execute and legislate, as well as appoint the highest adjudicators, in their society.⁵⁹

Obviously, such a collectivity does not exist as such. It derives its existence from that of its members. Furthermore, a collective entitlement actually benefits nobody but these very persons. Nonetheless, it operates differently than its individual counterparts.

The case at hand illustrates this difference. First, the right pertains to the group, not to the members themselves. Islanders hold the entitlement only as part of their community. Secondly, a violation injures the group in the first instance and the members only derivatively. It may occur despite the absence of any injury to individual Puerto Ricans. Thirdly, enforcement can only take place collectively. It requires allowing islanders to self-determine as a collectivity, whether within or without the United States.

In contrast, conceiving such entitlements individually would not make much sense. It would entail understanding them, counter-intuitively, as merely entitling the person concerned to engage politically in some community or another. From this standpoint, an encroachment would consist in preventing her from achieving self-determination in this manner. Conversely, vindication would essentially boil down to enabling her individually to partake in the democratic deliberations of some state or another, whether upon moving there or through an absentee ballot.

Once again, the United States encroaches upon and fails to vindicate this entitlement when construed collectively instead of individually. It may readily redress the communal infringement not only by admitting Puerto Rico into the Union, but also by granting it autonomy as an enhanced commonwealth, associated republic, or sovereign nation. U.S. representatives may legitimately embark upon this second

⁵⁹ See generally G.A. Res. 1514 (XV), ¶ 2, U.N. GAOR, 15th Sess., Supp. No. 16, U.N. Doc. A/4684, at 66 (Dec. 14, 1960) ("All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.").

path in acknowledgement of their own opposition to statehood, as well as that of a sizeable segment (probably still a majority) of the insular electorate. As maintained in Part I, however, they can find no justification to persist in ignoring the issue and depriving Puerto Ricans of democracy and of a fair shot at socio-economic well-being and financial stability.

To head in the signaled direction, the White House and Capitol Hill could consult with the local leadership to produce legislation to render politics in a non-federated Puerto Rico legitimate and functional. The proposed legislative bill could minimize controversy and maximize its chances of passage by echoing the 1950 statute currently in force and pursuing the exact same aim, though hopefully more successfully this time around. In other words, it could set the parameters for a new insular constitutional order that would afford the island genuine “self-government,”⁶⁰ explicitly conditioning the application of U.S. laws on Puerto Rican consent.

The federal Supreme Court could, in turn, contribute to the cause by ceasing to regard the island as a mere piece of property owned by the United States and to defer to the other governmental powers on the matter.⁶¹ It could reject this approach as constitutionally indefensible, as well as self-defeating, and press for change. On this front, the justices could start themselves by according Puerto Rico some of the prerogatives of state sovereignty.⁶² In addition, they could subject Congressional enactments that disadvantage the local citizenry to a probing review, while calling on the U.S. political establishment to dismantle its illegitimate and dysfunctional governance there.

Puerto Rico could thus evolve into an “Associated Free State” not solely in name, as now,⁶³ but also in fact. That is, it could (1) enter into an authentic association with the United States, insofar as it would join in as an equal; (2) accomplish freedom, in the sense of the capacity to shape the highest laws by which it lives; and (3) arrive at a statehood of its own, fully recognized under international law.⁶⁴ At the end of the day, U.S. authorities might gladly embrace this arrangement because it would

⁶⁰ See Puerto Rico Federal Relations Act of 1950, Pub. L. No. 81-600, pmb., 64 Stat. 319, 319 (1950), (The “Congress of the United States ... recogniz[ing] the right of self-government of the people of Puerto Rico” and “the principle of government by consent” enacts “a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption.”).

⁶¹ See *Downes v. Bidwell*, 182 U.S. 244, 285, 287 (1901) (The “territorial clause ... is absolute in its terms, and suggestive of no limitations upon the power of Congress in dealing with them.”) (“We are therefore of opinion that the Island of Puerto Rico is a territory appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution”),

⁶² *But cf.* *Puerto Rico v. Sánchez Valle*, 136 S. Ct. 1863, 1875 (2016) (“Puerto Rico cannot benefit from our dual-sovereignty doctrine.”).

⁶³ See CONST. (P.R.) (1952), pmb. (“We, the people of Puerto Rico, ... establish this Constitution for the Associated Free State that we now create, exercising our natural rights, within our union with the United States of America.”) (“Nosotros, el pueblo de Puerto Rico, ... establecemos esta Constitución para el Estado Libre Asociado que en el ejercicio de nuestro derecho natural ahora creamos dentro de nuestra unión con los Estados Unidos de América.”).

⁶⁴ See Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1541 (XV), U.N. Doc. A/RES/1541(XV), at 29 (Dec. 15, 1960), Principle VI (“A Non-Self-Governing Territory can be said to have reached a full measure of self-government by: (a) Emergence as a sovereign independent State; (b) Free association with an independent State; or (c) Integration with an independent State.”).

not only enable them to terminate the illegitimacy so long in place, but also spare them the economic, political, and cultural challenges of integrating the island into the federation.

IV. CONCLUSION

The federal government will most probably continue to ignore Puerto Rico's root problems for the reasons articulated. Nonetheless, it might just surprise everybody in the end and become proactive. In particular, the President and Congress might, perhaps with some prodding from the Supreme Court, wind up producing the discussed statutory amendment and providing for legitimate and functional governance on the island. They would thus finally institute genuine self-rule there, appropriately attending not to the population's individual civil rights, but rather to its collective self-determination.

The contemplated development will most definitely not take place this year. Nevertheless, it might come about, in some form, within the next decade. Of course, the antecedent debate toward this objective would have to launch now, in Puerto Rico as well as in the United States. It would have to enable both sides to visualize a regime under which Puerto Ricans democratically and deliberately devote themselves to promoting their economy and society and to keeping their finances under control.