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LEGALLY SUFFICIENT: THE COMPATIBILITY OF PUERTO RICO'S POST-1952 STATUS AND MODERN PRINCIPLES OF INTERNATIONAL LAW

Carlos E. Ríos-Collazo*

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ABSTRACT

Autonomy and sovereignty are typically associated with colonization issues. The alleged absence of both factors in Puerto Rico's territorial condition raises the question of whether changing the island's status is legally required to end a colonial arrangement that would otherwise allow the United States to defy normative standards of international law. To settle the colonial question, this article demonstrates how Puerto Rico has been a decolonized territory since the 1950s. The findings stemmed from a fact-based model set on five events advancing the evolution of Puerto Rico's legal condition. To validate the results, the study tested the end product(s) of Puerto Rico's legal evolution against decolonization standards established under international law. A confirmatory analysis of relevant jurisprudence enhanced validation with decisions resolving popularized misconceptions about the status quo. Consequently, changes to Puerto Rico's legal condition are not mandatory because the status quo concurs with international law.

I. INTRODUCTION

The legal nexus between Puerto Rico and the United States is undoubtedly challenging. After all, legal questions about their relational framework represent an ongoing debate. The classic objection holds that Puerto Rico's territorial status is a colonial condition demanding permanent solutions.[1] Sympathetic responses include recent congressional proposals sponsoring a status convention to advance self-determined changes to the Puerto Rico-United States (PR-US) nexus.[2] Endorsing the congressional posture, the United Nations invited the United States to let Puerto Rico self-determine the destiny of their territorial status in 2022.[3] Hence, Puerto Rico's territorial condition is a legal concern drawing both national and international attention. This situation underscores the need to determine if changing Puerto Rico's territorial condition (*status quo*) is legally required.

In response, this commentary will establish that changes to the *status quo* are not legally required because the PR-US nexus, as it stands today, is a non-colonial experiment complying with international law. Contrasting ordinary approaches, the defense presented in this commentary focuses on the justiciable aspect of the issue, rather than socioeconomic or political concerns. Thus, the discussion (1) surveys events sourcing the legal evolution of Puerto Rico's status;

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[1] *See* Norberto Muñiz-Muñiz, *The Unfinished Debate on the Political Status of Puerto Rico and its Relationship with the United States*, GEO. PROJECT ON STATE & LOC. GOV'T POL'Y & L., https://www.law.georgetown.edu/salpal/the-unfinished-debate-on-the-political-status-of-puerto-rico-and-its-relationship-with-the-united-states/ (last visited Feb. 18, 2024).

[2] *Id.*

[3] Press Release, Special Committee on Decolonization Approves Resolution Calling Upon the United States to Promote a Process for Puerto Rico's Self-Determination, Eventual Independence, U.N. Press Release GA/COL/3360 (June 20, 2022).

(2) defines the decolonization issue under international law; and (3) dissects jurisprudence repealing attempts to discredit the *status quo*.

A. The Colonial Problem and Significance

Understanding Puerto Rico's ties with the United States can be confusing, especially if the need to trace its evolution accurately is overlooked. In this context, new complications emanate from Puerto Rico's legal identity: an unincorporated territory of the United States with self-governing powers coexisting with Congress's plenary powers.[4] Unsurprisingly, this legal jigsaw—christened in 1952 as the "Commonwealth of Puerto Rico"[5]—draws cross-sectional criticism.

The Puerto Rican independence movement leads the denouncing front. The classic argument from the independence camp regards Puerto Rico as both "a political and economic anachronism" and "a source of embarrassment to the United States."[6] This separatist group contends that Puerto Rico's legal structure has a residual effect that leaves Puerto Rico as one of the few colonies remaining in the world.[7] Statehood advocates offer collateral support. Statehood orthodoxy affirms that Puerto Rico only "ceased to be known officially as a 'colony' and instead was euphemistically redesignated an 'unincorporated territory.'"[8] As a result, Puerto Rico must become a state to cure the colonial problem—statehood supporters reason.[9] Conversely, Puerto Rican nationalists advocate for the dissolution of Puerto Rico's ties with the United States to eradicate an imperial state of affairs stemming from an illegal occupation.[10] Others point to the U.S. Constitution as a source of American colonialism stemming from Congress's plenary powers over U.S. territories.[11] If this colonial effect is true, Puerto Rico's territorial condition gives the United States exposure under international law.

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[4] Dorian A. Shaw, *The Status of Puerto Rico Revisited: Does the Current U.S.-Puerto Rico Relationship Uphold International Law*, 17 FORDHAM INT'L L.J. 1006, 1007 (1994); *see also The Acting Secretary of the Interior (Northrop) to the Secretary of State,* FOREIGN RELS. OF THE U.S., 1952–1954, U.N. AFFAIRS, VOL. III (Oct. 9, 1952), https://history.state.gov/historicaldocuments/frus1952-54v03/d902.

[5] Rubén Berríos-Martínez, *Independence for Puerto Rico: The Only Solution*, 55 FOREIGN AFFS. 561, 566–67 (1977).

[6] *Id.* at 561.

[7] *Id.*

[8] Carlos Romero-Barceló, *Puerto Rico, U.S.A.: The Case for Statehood*, 59 FOREIGN AFFS. 60, 60 (1980).

[9] *Id.*

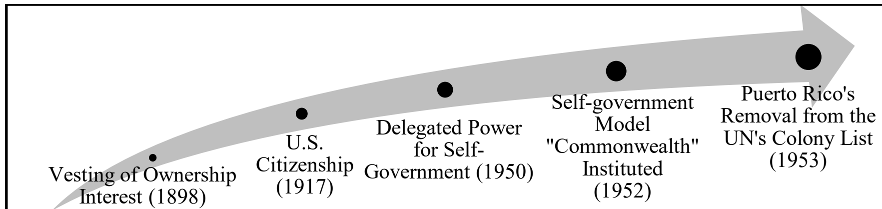
[10] Pedro Cabán, *Puerto Rican Nationalist Uprising*, 22 LAT. AM., CARIBBEAN & U.S. LATINO STUD. FAC. SCHOLARSHIP 498, 498–99 (2005).

[11] Ediberto Román, *Empire Forgotten: The United States Colonization of Puerto Rico,* 42 VILL. L. REV. 1119, 1121 (1997).

B. Theoretical Framework

Five events bind the objective basis of this commentary's theoretical framework. The model aims to clear the PR-US nexus of colonial charges by showing how the *status quo* meets international legal standards of decolonization.

Figure 1. Theoretical model of Puerto Rico's transformation into a decolonized U.S. territory.



II. BACKGROUND

In the eyes of many, Puerto Rico's *status quo* is a testament to the evils of colonialism.[12] This popular accusation holds that the United States allegedly denies Puerto Ricans the "basic human right to control their own destiny."[13] Given the dispositive nature of these charges, the next section surveys the legal evolution of Puerto Rico's status to test the validity of these colonial claims.

A. The Evolution of Puerto Rico's Legal Identity from 1898 to 1952

The relationship between Puerto Rico and the United States originated on July 25, 1898, as a result of the Spanish-American War.[14] Peace negotiations led Spain to officially surrender Puerto Rico to the United States on April 11, 1899, via the approval of the Treaty of Paris.[15] However, in 1897, Puerto Rico had successfully negotiated a Charter of Autonomy (Charter) with the Spanish Crown.[16] Under the Charter, Puerto Rico gained unprecedented powers, such as the right to agree to or dismiss treaties impacting Puerto Rico, institute an insular government

[12] Román, *supra* note 11, at 1120.
[13] *Id.* at 1123.
[14] Arnold Leibowitz, *The Commonwealth of Puerto Rico: Trying to Gain Dignity and Maintain Culture*, 11 GA. J. INT'L & COMP. L. 211, 218 (1981).
[15] Jose Colón, *Estado Libre Asociado: The Constitutionality of Puerto Rico's Legal Status*, 7 CHICANO L. REV. 95, 98 (1984).
[16] Leibowitz, *supra* note 14, at 215.

to manage local affairs, and regulate tariffs as well as customs taxes on imports and exports.[17] Based on these claims, Puerto Rican separatists have always challenged the legality of the Treaty of Paris.[18] The group argues that since the Charter made Puerto Rico "an independent sovereign, Spain did not have the authority to cede the island."[19] However, the Charter did not make Puerto Rico an independent sovereign.[20]

1. Autonomy Without Sovereignty: The Charter of 1897

The text of the Charter grants Puerto Rico significant autonomy over domestic matters and the power to contract with other nations.[21] However, the Charter fails to produce evidence establishing Puerto Rico's independence and sovereignty.[22] The first point to note is how Article 2 conveys delegated powers operating within the constraints of a master-servant framework.[23] Specifically, the referenced section states that the local government will incorporate an insular Parliament and a Governor General representing the Spanish Crown/central government (i.e., "Metropolis") who will enforce—in the name of the Spanish Crown—supreme authority.[24] Under this arrangement, Spain retained its authority over Puerto Rico. The Charter records Spain's delegation of powers to designated agents; not that the Spanish Crown divested its authority over Puerto Rico.

Article 5 offers additional language negating Puerto Rico's independent sovereignty. According to this section, the Spanish Crown was supposed to elect the Governor along with nearly 50% of the second chamber comprising the insular bicameral Parliament.[25] In addition, Article 15 includes subordination language recognizing the Spanish Crown's power to convene, cancel, adjourn sessions, or temporarily dissolve the insular Parliament.[26] Of note too is the recurring use of the term "colonial" while making descriptive references throughout the Charter.[27] Indeed, Article 34 reflects the Charter referring to the insular legislative body as the "Colonial Parliament."[28] Article 44 repeats this feature, showing the Charter referring to the Governor as the "Chief of the Colony."[29] These occurrences, acting

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17 *See* Colón, *supra* note 15, at 98.

18 *Id.* at 98.

19 *Id.*

20 *Id.* at 99.

21 Pedro Cabán, *Puerto Rico, Colonialism In*, 19 LAT. AM., CARIBBEAN & U.S. LATINO STUD. FAC. SCHOLARSHIP 516, 516 (2005).

22 *See generally Carta Autonómica de 1897 de Puerto Rico* [Autonomy Charter of 1897] (Spain).

23 *Id.* art. 2 (all citations were translated by the commentator from the original language).

24 *Id.*

25 *Id.* art. 5.

26 *Id.* art. 15.

27 *See, e.g.*, Autonomy Charter of 1897, arts. 21, 24, 29.

28 Autonomy Charter of 1897, art. 34.

29 *Id.* art. 44.

in harmony with an absence of independence-granting language identifiable in the Charter, indicate that Spain never surrendered its authority and ownership rights over Puerto Rico.

2. The Power of Vesting: The Treaty of Paris of 1898

After the American military interest prevailed during the Spanish-American War of 1898, the Spanish Crown sought to compensate the victor for damages arising from the conflict by transferring its title over Puerto Rico to the United States.[30] To support this vesting interest, the parties signed the Treaty of Paris (Treaty) on December 10, 1898.[31] However, the transaction was not official until ratification on April 11, 1899.[32] The Treaty vested the United States with absolute powers over the legal status of Puerto Rico.[33] Article IX states: "The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress."[34] As a result, the United States gained valid possession over Puerto Rico.

3. The Road to Self-Governance

As established above, the United States obtained Puerto Rico via the Treaty of Paris with Spain. However, this transaction also brought legal issues to Puerto Ricans. Among these include the fact that under the 1898 accord, Puerto Ricans lost (1) self-governing rights enjoyed under the Charter, (2) their Spanish citizenship, and (3) the receipt of U.S. citizenship was excluded from the four corners of the Spain-U.S. treaty.[35] While examining the citizenship issue that Puerto Ricans faced at the turn of the 20th century, Pedro Cabán reacted: "They automatically became subjects of the United States without any constitutionally protected rights."[36]

With the transition, the United States placed Puerto Rico under a colonial regime that included the establishment of a military government that remained in charge of insular affairs until May 1, 1900.[37] This military ruling served the United States' interest in Puerto Rico as American officials embracing racial superiority philosophies viewed the local population as primitives disqualified for self-

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[30] Rafael Cox-Alomar, *The Puerto Rico Constitution at Seventy: A Failed Experiment in American Federalism?*, 57 NEW ENG. L. REV. 1, 7 (2022).

[31] *Id.*

[32] *See* Colón, *supra* note 15, at 98. *See also* Treaty of Paris of 1898, U.S.-Spain, pmbl., Dec. 10, 1898, 30 Stat. 1754 [hereinafter Treaty of Paris of 1898].

[33] Treaty of Paris of 1898.

[34] *Id.* art. IX.

[35] Cabán, *supra* note 21, at 516.

[36] *Id.*

[37] *Id.*

government.[38] The general impression was that the United States believed, at this early stage, that Puerto Ricans lacked "appreciation for how Anglo-Saxon democratic institutions functioned."[39] Despite this ignominious beginning, the United States began to pave, in Puerto Rico, the road to self-government with a series of federal legislations that began with the enactment of the *Organic Act of 1900*.

a. The Organic Act of 1900

The first step the U.S. took toward the implementation of a self-government system in Puerto Rico was very timid. With the enactment of the *Organic Act of 1900* (*Foraker Act*),[40] Congress replaced the military system originally established to govern Puerto Rico with a civilian administration.[41] While the text suggests unfamiliarity with Puerto Rico as it misnamed the territory as "*Porto Rico*," the law granted Puerto Ricans "the protection of the United States" without granting them U.S. citizenship. [42]

Notwithstanding the above, the law created positions in its instituted civilian government that included a presidentially-appointed chief executive officer bearing the official title of "Governor of Porto Rico," [43] and an Executive Council constituted of at least five "native inhabitants of Porto Rico."[44] Another critical element espoused in the legislative text is Section 31 ensuring that insular laws were not contrary to U.S. interests by way of recognizing and reserving Congress's power/right to oversee and nullify local legislation.[45] In the end, the *Foraker Act* reinforced Federal control over Puerto Rico but not without improving Puerto Rico's legal conditions under the U.S. flag by entitling insular residents with protective measures that the U.S.-Spain treaty of 1898 ignored.

b. The Organic Act of 1917

The next step in the evolution of Puerto Rico's legal framework was the enactment of the *Organic Act of 1917* (*Jones Act*).[46] While under this law the President retained selection powers for key government officials in Puerto Rico (including the governor, the commissioner of education, the attorney general, and

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38 Cabán, *supra* note 21, at 516

39 *Id.*

40 Foraker Act of 1900, Pub. L. No. 56-191, 31 Stat. 77, 77 (1900) [hereinafter Foraker Act].

41 *See* Shaw, *supra* note 4, at 1019.

42 § 7, 31 Stat. at 79.

43 § 17, 31 Stat. at 81.

44 § 18, 31 Stat. at 81.

45 § 31, 31 Stat. at 83.

46 *See* Jones–Shafroth Act, Pub. L. No. 64-368, 39 Stat. 951, 961 (1917) [hereinafter Jones Act].

others),[47] the act significantly improved the Puerto Rico-U.S. link by addressing issues the *Foraker Act* left untouched.

Among the most significant improvements the United States brought about via the *Jones Act* was the granting of American citizenship to all Puerto Ricans, provided that the insular resident did not hold foreign citizenship at the time, and did not reject U.S. citizenship.[48] The *Jones Act* included a bill of rights (consistent with the U.S. Constitution) recognizing *inter alia* that no law could be enacted in Puerto Rico that (1) deprived the right to life, liberty, or property without due process; or (2) denied "to any person therein equal protection of the laws." [49] In addition, Section 2 provides that no *ex post facto* law shall be enacted.[50] Other noteworthy changes included the vesting in a bicameral legislature—elected by popular vote[51]—of all local legislative powers in Puerto Rico. Of note is also the fact that under the *Jones Act*, all Federal laws "not locally applicable . . . have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws."[52] Thus, the cumulative effect of the facts surveyed thus far points to the development of a progressive legislative agenda leading to modifications made to Puerto Rico's legal and organizational infrastructure. In this context, the passing of the *Jones Act* is critical in how the United States and Puerto Rico stepped further away from a colonial model.

c. Public Law 600: A Gateway to Self-government

With the *Jones Act*, Congress nourished the legal relationship between Puerto Rico and the United States. Most significantly, the act helped Puerto Rico resolve the citizenship issue lingering since 1898. However, the law did not empower Puerto Rico to enjoy a self-government model through which its people could self-determine the course of local affairs.[53] Indeed, although a bill of rights consistent with that of the U.S. Constitution was included in the act, the fundamental tenet of democratic order at the time of the act—that is, the consent of the governed—was still missing in the civilian government the *Foraker Act* instituted in Puerto Rico.[54] In response to the democratic challenges transcending the *Jones Act* effect, the United States took a remarkable "step toward complete

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[47] § 12–13, 39 Stat. at 955.

[48] § 5, 39 Stat. at 953.

[49] § 2, 39 Stat. at 952.

[50] *Id.* The probative value this provision represents in defending the sustainability of the *status quo* is discussed in Part IV of this commentary.

[51] § 25–26, 39 Stat. at 958.

[52] § 9, 39 Stat. at 954.

[53] H.R. REP. NO. 107-501, at 4 (1985).

[54] *Id.*

self-government"[55] with the *Elective Governor Act of 1947*.[56] With this legislation, Puerto Ricans began to enjoy the right to elect their governor.[57]

In 1950, the United States took another significant step toward implementing a self-government model on the island with *Public Law 600*.[58] Notably, Congress opened the legislative text recognizing the "right of self-government of the people of Puerto Rico,"[59] and a self-government interest driving legislative action.[60] The language supporting the law has the United States "fully recognizing the principle of government by consent,"[61] and adopting the Act "in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption."[62] The law empowered the insular legislative body to organize a constitutional convention to prepare a constitution for the people of Puerto Rico to accept or reject by casting their vote via a referendum.[63] Also, Congress required the constitutional proposal to incorporate a bill of rights and offer a republican governmental framework.[64] With the July 3, 1950 enactment of this law, the United States set in motion a plan for the creation and implementation of a self-government model in Puerto Rico.

d. Public Law 447: A Compact, Constitution, and Commonwealth

While *Public Law 600* has been characterized in academic circles as legislation with an "imperialistic tenor,"[65] the historical evidence demonstrates that the implementation of the law was treated as a compact (like the legislative text calls it) because the people in Puerto Rico had democratic means to express their will in the process when they overwhelmingly approved the law in a plebiscite held on June 4, 1951.[66] In accordance with the newly approved law, Puerto Rico drafted a constitution framing their desired self-government design in a process that lasted between September 17, 1951, and February 6, 1952.[67] Building on the previous,

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[55] Letter from President Harry S. Truman to Governor Piñero of Puerto Rico Upon Signing Bill Providing for an Elected Governor (Aug. 4, 1947) [hereinafter Letter from President Truman to Governor Piñero] (on digital file with the American Presidency Project).

[56] *See* Elective Governor Act of 1947, Pub. L. No. 80-362, 61 Stat. 770 (1947).

[57] Letter from President Truman to Governor Piñero, *supra* note 55.

[58] *See* Puerto Rican Federal Relations Act, Pub. L. No. 81-600, 64 Stat. 319 (1950) [hereinafter Public Law 600]. Section 4 of the act states that the act may also be cited as Puerto Rican Federal Relations Act. It may also be referred to as a compact.

[59] *Id.* at 319.

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] § 2, 64 Stat. at 319.

[64] *Id.* at 319.

[65] Román, *supra* note 11, at 1153.

[66] *See* An Act to Provide for the Organization of a Constitutional Government by the People of Puerto Rico, Pub. L. No. 82-447, 66 Stat. 327 (1952) [hereinafter Public Law 447].

[67] *Id.*

Puerto Rico held a second referendum on March 3, 1952, ending with a vote of 374,649 to 82,933 blessing the proposed constitution.[68]

On March 3, 1952, Congress approved Puerto Rico's constitution—after modifying portions of the draft to satisfy the U.S. interest to keep the content consistent with *Public Law 600* and the U.S. Constitution—via *Public Law 447*.[69] The language of *Public Law 447* discloses Congress's interest to "provide for the organization of a constitutional government by the people of Puerto Rico."[70] In alignment with such interest to improve the governing conditions in Puerto Rico, and in furtherance of the contractual nature of the process of establishing a self-government structure on the island, Congress asked Puerto Rico to include in their constitution language that made public education at the elementary level a constitutional commitment.[71]

Consequently, *Public Law 447* served as U.S. approval of the Puerto Rican constitutional text. Following this event, a Puerto Rican constitution established a new form of self-government—officially known as the Commonwealth of Puerto Rico—on July 25, 1952.[72] This way, Puerto Rico began to live in a republican system of self-government founded on a constitution that (1) included a Bill of Rights consistent with the U.S. Constitution and the Universal Declaration of Rights of Man; and (2) allowed Puerto Rico to elect its lawmakers.[73]

B. Decolonization, the United Nations, and International Law

The Treaty of Westphalia of 1648 is the source scholars generally cite as the European-based origin of the concept of sovereignty in international law.[74] However, sovereignty did not appear to be a power equally recognized on non-European territories interacting with European states in the 15th and 16th centuries.[75] Thus, the expansion of the sovereign into the non-sovereign induced the evolution of international law to justify proliferating imperialistic policies.[76] The practice of this Westphalian philosophy remained until the birth of the United Nations in 1945.[77] The impact of this new event in the case of Puerto Rico and the colonial question are assessed next.

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[68] *See* 66 Stat. 327.

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] H.R. REP. NO. 107-501, at 4.

[73] *Id.*

[74] Antony Anghie, *The Evolution of International Law: Colonial and Postcolonial Realities*, 27 THIRD WORLD Q. 739, 745–46 (2006).

[75] *Id.* at 742.

[76] *Id.*

[77] U.N. decolonization efforts began at its inception with the adoption of its incorporating charter, which includes three areas focusing on furthering a global decolonization interest. *See* U.N. Charter art. 1, ¶ 2, art. 73–74; *The United Nations and*

1. Decolonization: An International Community Interest

Since its inception, the United Nations has promoted decolonization processes around the world.[78] To this end, Chapter IX of the U.N. Charter defines colonies (officially termed: *non-self-governing territories*), as "territories whose peoples have not yet attained a full measure of self-government."[79] In support of the U.N.'s decolonization program, U.N. *Resolution 66 (1)* identified 72 territories meeting in 1946 the colonial definition the U.N. Charter prescribed.[80] The list included Puerto Rico along with six other U.S. territories.[81]

2. Principles of International Law: Relevant Codifications

When the United States acquired Puerto Rico in the 19th century, international law had few limits on territorial expansion[82] and the trend was to advance colonization.[83] However, the United Nations promoted decolonization from its inception.[84] The interest in preventing the horrors of World War II led the international community to replace century-old doctrines of annexation with cosmopolitan principles of decolonization and self-determination.[85] To this end, the United Nations codified in its Charter and several resolutions international legal principles advancing global decolonization interests.[86] The U.N. Charter, for example, recognizes the principle of equal rights and self-determination.[87] Chapter XI, Article 73(b) also requires state members to "develop self-government" in their

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Decolonization, UNITED NATIONS, https://www.un.org/dppa/decolonization/en/about (last visited Mar. 8, 2024).

[78] *United Nations and Decolonization: Past to Present*, UNITED NATIONS (Oct. 21, 2020), https://www.un.org/dppa/decolonization/en. The term of art leaping off the quoted definition is "self-government." As discussed in detail in the next section, the colonial definition, as prescribed by the U.N., and applied in this commentary is set on the condition that the inhabitants of the territory in question enjoy/have access to a form of self-government. The milestones Puerto Rico reached between 1950 and 1952 in the evolution of its legal framework met the self-government criterion with the institution of a commonwealth that is the progeny of a compact between the U.S. and the people of Puerto Rico (see the Analysis section of this commentary *infra* Part III).

[79] U.N. Charter art. 73.

[80] G.A. Res. 66 (1), at 124 (Dec. 14, 1946).

[81] *Id.*

[82] Jason Adolfo Otaño, *Puerto Rico Pandemonium: The Commonwealth Constitution and the Compact-Colony Conundrum*, 27 FORDHAM INT'L. L.J. 1806, 1823 (2004).

[83] *Id.*

[84] *See The United Nations and Decolonization*, *supra* note 77.

[85] Otaño, *supra* note 82, at 1826.

[86] *See The United Nations and Decolonization, supra* note 77.

[87] U.N. Charter art. 1, ¶ 2.

territories as their absolute decolonization duty.[88] Furthermore, *Resolution 742* establishes decolonization criteria.[89] According to this U.N. instrument, a colonial condition can be cured via a territorial government that represents the free choice of the people[90] and is free from the interference of another State in respect of the internal government.[91]

III. ANALYSIS

The evolution of the PR-US nexus is unprecedented.[92] However, this is not an uncaused phenomenon. The record shows that Puerto Rico's legal identity is rooted in a period of territorial expansion endorsed not only by international law but also by cases from the Supreme Court of the United States (SCOTUS) creating the plenary powers doctrine.[93] The impact of this legal construct is considered next.

By anchoring the doctrine referenced earlier in Article IV, SCOTUS enshrined with Congress the constitutional authority to govern new U.S. territories.[94] This interest also levied the need to address the territorial contiguity factor cementing the norms of territorial governance SCOTUS developed.[95] To support the concern, SCOTUS engineered a legal construct segregating U.S. principalities between unincorporated and incorporated territories.[96] This operational distinction, coined as the nonincorporation principle, is how SCOTUS recognized Congress's constitutional flexibility to govern noncontiguous territories like Puerto Rico indefinitely and under the subordination of the plenary powers

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[88] U.N. Charter art. 73(b).

[89] *See generally* G.A. Res. 742, at 21–23 (Nov. 27, 1953).

[90] *See* G.A. Res. 742, at 22. (see section B(1) in the first part of the list of factors indicative of the attainment of independence).

[91] *Id.* (see section B(2) in the first part of the list of factors indicative of the attainment of independence).

[92] Bd. of Eng'rs, Architects & Surveyors v. Flores de Otero, 426 U.S. 572, 596 (1976) ("We readily concede that Puerto Rico occupies a relationship to the United States that has no parallel in our history.")

[93] Rafael Hernández-Colón, *The Evolution of Democratic Governance Under the Territorial Clause of the U.S. Constitution*, 50 SUFFOLK U.L. REV. 587, 587 (2017).

[94] *See id.*; *see also* U.S. CONST., art. IV, § 3, cl. 2.

[95] *See* Hernández-Colón, *supra* note 93, at 587; *see also* U.S. CONST. art. IV, § 3, cl. 2.

[96] Hernández-Colón, *supra* note 93, at 588. The cases Colón cites in a general context warranting special attention at this point of the discussion include:

> Balzac v. Porto Rico, 258 U.S. 298 (1922); Dorr v. United States, 195 U.S. 138 (1904); Dooley v. United States, 183 U.S. 151 (1901); Downes v. Bidwell, 182 U.S. 244 (1901); Dooley v. United States, 182 U.S. 222 (1901); Goetz v. United States, 182 U.S. 221 (1901); De Lima [v. Bidwell], 182 U.S. 1 (1901).

Id. at n.4 (emphasis changed).

mentioned earlier.[97] In addition, an adverse constitutional operability is moderated by the corporate status of the territory. Rafael Hernández-Colón explains: "This doctrine establishes that, except for those provisions that protect fundamental rights, the provisions of the U.S. Constitution do not apply *ex proprio vigore* to unincorporated territories."[98] These factors combined with an absence of self-governance and self-determination expose unincorporated territories to the risk of becoming constitutionally endorsed colonies. In this context, this commentary has the critical need to demonstrate the legal harmony and coexisting functionality of three operational elements: (1) the 1952 Compact (also known as *Public Law 600*), (2) the autonomy of the Commonwealth of Puerto Rico, and (3) Congress's plenary powers.

A. The Compact Effect: A Decolonization Experiment

Before 1952, SCOTUS jurisprudence branded Puerto Rico's legal status as a colonial product emanating from the applicability of the Territorial Clause and the nonincorporation doctrine.[99] Supportive results include how constitutional provisions have been considered to not be inherently applicable to an unincorporated territory.[100] In *Downes v. Bidwell*, SCOTUS qualified Puerto Rico as an unincorporated territory and deemed it constitutionally permissible to implement a military regime in newly acquired territories (like Puerto Rico) before establishing a civil government.[101] SCOTUS held that absent of a treaty provision or a Congressional act: "The civil government of the United States cannot extend immediately and of its own force, over territories acquired by war. Such territory must necessarily, in the first instance be governed by the military power under the control of the President."[102] However, while these factors point to a colonial setting in Puerto Rico, the 1952 Compact removed the colonial condition(s) of the PR-US nexus conflicting with Congress's plenary powers, as demonstrated next.

1. The Territorial Clause in a Post-1952 Context

Despite the proprietary rights the United States received over Puerto Rico via the Treaty of Paris, the transaction did not define Puerto Rico's territorial status.

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97 Hernández-Colón, *supra* note 93, at 588.

98 *Id.*

99 *See* cases cited in *supra* note 96; *see also* Downes v. Bidwell, 182 U.S. 244, 247 (1901).

100 *See* Anghie, *supra* note 74, at 745*; see also Downes*, 182 U.S. at 247.

101 *Downes*, 182 U.S. at 287.

102 *Id.* at 345.

Instead, the issue lingered until 1901, when the SCOTUS addressed the matter in a series of landmark decisions commonly known as the *Insular Cases*.[103]

The *Downes* court affirmed, in part, that "The island of Porto Rico [sic] is not a part of the United States within that provision of the Constitution which declares that "all duties, impost, and excises shall be uniform throughout the United States."[104] Thus, SCOTUS considered Puerto Rico a territory. The Court also found it pertinent to recognize that under Article IV, section 3, clause 2 (commonly known as the Territorial Clause) of the U.S. Constitution, Congress has plenary powers over U.S. territories, for the text reads: "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."[105] SCOTUS further reasoned that U.S. regions that were not states were necessarily considered either unincorporated or incorporated territories.[106] Following this reasoning, SCOTUS noted that in cases of territorial acquisitions transacted via a treaty that do not contain conditions for territorial incorporation, the acquired territory remains unincorporated until Congress decides to incorporate and transition it into a state.[107]

In *De Lima v. Bidwell*,[108] SCOTUS held that Congress had the power to administer the government of a territory acquired by treaty, convert it into a state, or dispose of it.[109] SCOTUS ends by noting that once a territory is "acquired by treaty, it belongs to the United States, and is subject to the disposition of Congress."[110] Thus, the *Downes* and *De Lima* decisions show how the Territorial Clause moderates the legal nexus between Puerto Rico and the United States. However, the rulings do not prevent Congress from voluntarily reducing these powers via territorial delegation.

While ignoring the territorial delegation option, the plenary powers argument has been used to allege a legal obligation to change Puerto Rico's status. The classic strategy is to attack the legal effects of the Compact establishing Puerto Rico as a commonwealth in 1952. Critics on both sides of the argument (i.e., independence and statehood advocates) claim that Congress's plenary powers show the legal futility of the 1952 Compact. On the one hand, the independence front holds that the "establishment of the Commonwealth was used to create a myth."[111] On the other end, the statehood platform labels the Compact-based creation of the

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[103] Shaw, *supra* note 4, at 1013. Relevant *Insular Cases* include De Lima v. Bidwell, 182 U.S. 1 (1901); Downes v. Bidwell, 182 U.S. 244 (1901); Dooley v. United States, 182 U.S. 222 (1901); Huss v. N.Y. & P.R. Steamship Co., 182 U.S. 392 (1901); Armstrong v. United States, 182 U.S. 243 (1901); Pepke v. United States, 183 U.S. 176 (1901); Goetze v. United States, 182 U.S. 221 (1901).

[104] *Downes*, 182 U.S. at 244.

[105] U.S. CONST. art. IV, § 3, cl. 2.

[106] *Downes*, 182 U.S. at 339.

[107] *Id.*

[108] 182 U.S. 1 (1901).

[109] *See id.* at 197.

[110] *Id.*

[111] Berríos-Martínez, *supra* note 5, at 567.

Commonwealth of Puerto Rico as a myth;[112] and views the Territorial Clause as a colonial device that "invests Congress with the 'power to dispose of and make all needful rules and regulations respecting the territory of other property belonging to the United States."[113] To compound this attempt to delegitimize the 1952 Compact, Carlos Romero-Barceló incorrectly cites "*Harris v. Santiago*"—instead of *Harris v. Rosario*[114]—to affirm that SCOTUS and the Territorial Clause endorse Congress to treat U.S. citizens domiciled in Puerto Rico differently because of their choice of *territorial* residence.[115]

Despite its emotional power, the argument is not privileged with the ability to ignore the territorial delegation factor. As such, the idea that the Territorial Clause vests Congress with irreducible powers to regulate U.S. territories is unfounded. SCOTUS precedent recognizes Congress's constitutional ability to surrender its powers over U.S. territories.[116] In this case, nothing in the constitutional text forces or restricts Congress from maintaining perpetual authority over a U.S. territory. Indeed, the text of the Territorial Clause expressly states that Congress may dispose of any U.S. territory, as when the United States granted independence to the Philippines in 1946.[117] Therefore, it logically follows from the cited example, that with the ability to surrender Congress's power over a territory via a grant of territorial independence also comes the capacity to reduce regulatory faculties arising from the Territorial Clause. As Hernández-Colón notes,[118] SCOTUS settled the point in *National Bank v. Yankton*[119] recognizing that "such a power . . . continues until granted away." Thus, Congress is constitutionally endowed to reserve for itself the plenary powers flowing from the tributaries of the Territorial Clause or surrender them partially or even completely.

In addition, there is nothing in the constitutional text preventing Congress from delegating its territorial powers to an agent.[120] After all, Congress's plenary powers include making all rules necessary for the regulation of U.S. territories.[121] As a result, Congress has the power to create an agency relationship and delegate to its territorial agent the power to exercise a determined degree of local governance.[122] History shows that such kind of legal product is embodied in Congress's creation of the law(s) leading to the 1952 Compact and the Commonwealth of Puerto Rico (i.e., *Public Law 600*).[123] Hence, there is nothing

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112 Romero-Barceló, *supra* note 8, at 61.

113 *See id.* at 60.

114 *See* 446 U.S. 651 (1980).

115 Romero-Barceló, *supra* note 8, at 65.

116 Hernández-Colón, *supra* note 93, at 605.

117 U.S. CONST. art. IV, § 3, cl. 2.

118 Hernández-Colón, *supra* note 93, at 605.

119 *See* 101 U.S. 129, 133 (1879).

120 Brief of Julian Davis Mortenson as Amicus Curiae in Support of Respondents at 10, West Virginia v. U.S. Env't Prot. Agency, 597 U.S. 697 (2022) (No. 20-1530).

121 U.S. CONST. art. IV, § 3, cl. 2.

122 *See* Brief of Julian Davis Mortenson, *supra* note 120, at 2.

123 *See Flores de Otero*, 426 U.S. at 597 (discussing Congress's authority and effectiveness to protect the rights of inhabitants of Puerto Rico); *see also* Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863 (2016) (discussing Public Law 600).

"mythological" about Congress's decision to leave the ability to govern internal affairs partially in the hands of Puerto Rico while reserving the power to handle federal issues to the United States.

2. Self-Governance, Self-Determination, and Legal Identity

The preceding discussion established Congress's power to adopt a compact morphing Puerto Rico into a commonwealth. Under this arrangement, Puerto Rico and the United States entered into a democratic agreement that left local issues under Puerto Rico's authority and the United States retained the power to handle federal affairs.[124] From this point arises the necessity to show how the 1952 Compact and its governmental progeny represent Puerto Rico's exercise of self-determination rights establishing a form of self-government that has legal identity.

The 1952 Compact is the culmination of a legal process that included *inter alia* a democratic consultation with the people of Puerto Rico. In *Calero-Toledo v. Pearson Yacht Leasing Co.*, SCOTUS recognized the democratization of Puerto Rico's legal nexus with the United States by way of the 1952 Compact through which Puerto Rico instituted a local constitution empowering a scoped autonomy exercised via its self-governance.[125] This same point was raised at the U.S. Court of Appeals, First Circuit: "Puerto Rico engaged in a democratic exercise of popular sovereignty by adopting their *own* Constitution establishing their *own* government to enact their *own* laws."[126]

Despite the results recognized above, independence and statehood advocates in Puerto Rico insist on discrediting the Compact. The statehood front contends that the legislative power Congress granted to Puerto Rico under Public Laws 447 and 600—sponsoring the Compact (and the Commonwealth)—helped Puerto Rico obtain "absolutely no additional economic or political power, except the right to design the structure of its internal government."[127] On the other end, the independence front impugns the democratic authenticity of the 1952 Compact by qualifying the 1951 vote supporting the Compact as a "yes-or-no referendum."[128] However, the charge impliedly admits that, as part of the formation of the 1952 Compact, Puerto Ricans had the power to accept or reject the Compact offer via their "yes or no" vote. This created a contract arrangement binding Puerto Ricans and the United States, as well as any future Congress.[129]

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[124] *See* text *infra* at Part III.A.1.

[125] 416 U.S. 663 (1974).

[126] Brief of former Puerto Rico Governors Sila M. Calderón & Alejandro García-Padilla as Amici Curiae in Support of the First Circuit's Ruling on the Appointments Clause at 2, Fin. Oversight Mgmt. Bd. for Puerto Rico v. Aurelius Inv., 140 S. Ct. 1649 (2020) (Nos. 18-1334, 18-1496, 18-1514).

[127] Romero-Barceló, *supra* note 8, at 61.

[128] Berríos-Martínez, *supra* note 5, at 567.

[129] Memorandum Re: Power of the United States to Conclude with the Commonwealth of Puerto Rico's Compact Which Could be Modified Only by Mutual Consent 6 (Jul. 23, 1963), https://www.justice.gov/olc/file/796061/download.

Furthermore, *Mora v. Mejías*[130] reinforces how the Compact led Puerto Rico to exercise self-determination and self-governance rights. There, the First Circuit viewed the Commonwealth of Puerto Rico as a legal entity that Puerto Ricans organized under their approved constitution.[131] The First Circuit concluded that the Commonwealth of Puerto Rico was "created by the act and with the consent of the people of Puerto Rico, and joined in the union with the United States of America *under the terms of the compact* (emphasis added)."[132] SCOTUS settled the self-determination/self-governance issue in *Flores de Otero* by affirming:

> [C]ongress responded to demands for greater autonomy for Puerto Rico with the Act of July 3, 1950 . . . This legislation offered in the "nature of a compact" to the "people of Puerto Rico" § 1. 48 U.S.C. § 731b, authorized them to draft their own constitution which, however, "shall provide a republican form of government and shall include a bill of rights," . . . . As was observed in *Calero-Toledo v. Pearson Yacht Leasing Co* . . . the purpose of Congress in the 1950 and 1952 legislation was to accord to Puerto Rico the degree of autonomy and independence normally associated with States of the Union, and accordingly, Puerto Rico "now elects its Governor and legislature; appoints its judges, all cabinets officials, and lesser officials in the executive branch; sets its own educational policies; determines its own budget; and amends its own civil and criminal code."[133]

Therefore, the Compact is the conduit to the autonomous system under which Puerto Rico's self-determination and self-government coexist with Congress's plenary powers.

B. U.N. Adjudication of Puerto Rico's Decolonized Status

The adjudicative role of the United Nations needs to be considered when analyzing the legal effects of the Compact and the autonomy of Puerto Rico's territorial government. After all, immediately after the end of World War II, the United Nations classified Puerto Rico as a colonial sample of "a non-self-governing territorial possession."[134] On November 27, 1953, the United Nations set international legal standards for decolonization by adopting *Resolution 742* in its eighth General Assembly session.[135] In that same session, the United Nations adjudicated the case of Puerto Rico by recognizing the decolonization effects of the

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130 *See* 206 F.2d 377 (1st Cir. 1953).
131 *See id.* at 387.
132 *Id.*
133 *Flores de Otero*, 426 U.S. at 592–94.
134 *See* Cabán, *supra* note 21, at 519; *see also* G.A. Res. 66 (1), at 125.
135 U.N. GAOR, 8th Sess., 459th plen. mtg., U.N. Doc. A/RES/742(VIII) (Nov. 27, 1953).

Compact establishing a territorial government with legal identity.[136] In the text of the resolution, the United Nations "*[r]ecognizes* that, the people of the Commonwealth of Puerto Rico, by expressing their will in a free and democratic way, have achieved a new constitutional status."[137] Further, "the people of the Commonwealth of Puerto Rico have effectively exercised their right to self-determination."[138] The United Nations affirmed:

> [I]n the framework of their Constitution and of the compact agreed upon with the United States of America, the people of the Commonwealth of Puerto Rico have been invested with attributes of political sovereignty which clearly identify the status of the self-government attained by the Puerto Rican people as that of an autonomous political entity.[139]

Relying on the Committee on Information from Non-Self-Governing Territories' report, the United Nations agreed that the Compact and the establishment of the Commonwealth of Puerto Rico represented forms of self-determination and self-government meeting decolonization standards.[140] Thus, the United Nations accredited Puerto Rico's non-colonial status by removing this territory from the 1946 list[141] of non-self-governing territories.[142] It ratified its position by affirming in *Resolution 748* that Puerto Rico had ceased to be a non-self-governing territory.[143]

C. Territorial Autonomy: Contemporary Applications

While *Resolution 748* represents the international adjudication of Puerto Rico's decolonized status, legal disputes about this territory's autonomy have not ceased. Contemporary issues handled in court include claims about U.S. citizens living in Puerto Rico facing (1) limited access to Federal social benefits, and (2) the inability to vote in Federal elections. Jurisprudence on constitutional issues also raised questions about Puerto Rico's autonomy. Salient rulings in these disputed areas align with the U.N. declassification of Puerto Rico's colonial status.

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[136] G.A. Res. 748 (VIII), at 26 (Nov. 27, 1953).
[137] *Id.*
[138] *Id.*
[139] *Id.*
[140] *Id.* (citing U.N. GAOR, 8th Sess., Supp. No. 15, pt. I, § VII).
[141] G.A. Res. 66 (1), at 125.
[142] Cabán, *supra* note 21, at 519.
[143] *See generally* G.A. Res. 748, *supra* note 136.

1. Equal Protection with Limited Access to Federal Benefits

Another assault against Puerto Rico's autonomy is the claim that the *status quo* fails to prevent the United States from discriminating against Puerto Rico's residents. A recurring complaint under this theory is that U.S. citizens do not enjoy equal protection guarantees under the Fifth Amendment while living in Puerto Rico.[144] As a result, Puerto Ricans are not entitled to receive the same federal benefits as those residing in the 50 states or the District of Columbia.[145] SCOTUS disagreed with this discrimination argument in *Califano v. Torres.*[146] The *Califano* Court upheld the constitutionality of a Social Security provision causing Supplemental Income (SSI) recipients to lose benefits when relocating outside the 50 states or the District of Columbia.[147] The Court ruled that the limitation had to be grounded on a rational basis.[148] SCOTUS invoked three economic bases to tailor the constitutional test. SCOTUS first noted that, under "the unique tax status of Puerto Rico, its residents do not contribute to the public treasury."[149] Second, the Court agreed the cost of adding Puerto Rico to the SSI program was exorbitant.[150] SCOTUS further noted that "inclusion in the SSI program might seriously disrupt the Puerto Rican economy."[151]

In *Harris v. Rosario*,[152] SCOTUS applied the *Califano* standard to reject the claim that receiving less financial assistance in Puerto Rico from a federal program than that which is paid in any of the States is unconstitutional. The Court held in this context that Congress "may treat Puerto Rico differently from States as long as there is a rational basis for its actions."[153] The *Harris* court used the same three economic-based reasons from *Califano* to deny the claim.[154] Thus, *Harris* did not endorse Congressional discrimination against U.S. citizens living in Puerto Rico.

Affirming *Califano*, SCOTUS held in *U.S. v. Vaello-Madero*[155] that Congress has no constitutional duty to extend SSI benefits to Puerto Rico's residents.[156] The Court reasoned:

> In *Califano v. Torres*, the Court addressed whether Congress's decision not to extend Supplemental Security Income to Puerto Rico violated the constitutional right to interstate travel. 435 U. S.

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[144] CONG. RSCH. SERV., EQUAL PROTECTION DOES NOT MEAN EQUAL SSI BENEFITS FOR PUERTO RICO RESIDENTS, SAYS SUPREME COURT 1 (2022).
[145] *Id.*
[146] 435 U.S. 1, 3 n.4 (1978).
[147] *Id.*
[148] *Id.* at 5.
[149] *Id*. at 3 n.5.
[150] *Id*.
[151] *Califano*, 435 U.S. at 3 n.5.
[152] 446 U.S. 651, 651 (1980).
[153] *Id.* at 651–52.
[154] *Id.* at 652.
[155] *See* 596 U.S. 159 (2022).
[156] *See id.* at 164–65.

> 1 (1978) (per curiam). Applying the deferential rational-basis test, the Court upheld Congress's decision. The Court explained that Congress had exempted residents of Puerto Rico from federal taxes. And the Court concluded that Congress could likewise treat residents of Puerto Rico differently from residents of the States in the Supplemental Security Income benefits program. *Id.*, at 3–5, and n. 7.[157]

Building on the above, the Court continued:

> A few years later, in *Harris v. Rosario*, the Court again ruled that Congress's differential treatment of Puerto Rico in a federal benefits program did not violate the Constitution . . . . [T]he Territory Clause permits Congress to "treat Puerto Rico differently from States so long as there is a rational basis for its actions." Citing the prior decision in *Torres*, the Court noted that Congress's tax laws treated residents of Puerto Rico differently from residents of the States. And the Court concluded that Congress could do the same for that benefits program.
>
> Those two precedents dictate the result here. The deferential rational-basis test applies. And Puerto Rico's *tax* status—in particular, the fact that residents of Puerto Rico are typically exempt from most federal income, gift, estate, and excise taxes—supplies a rational basis for likewise distinguishing residents of Puerto Rico from residents of the States for the purposes of the Supplemental Security Income *benefits* program. In devising tax and benefits programs, it is reasonable for Congress to take account of the general balance of benefits to and burdens on the residents of Puerto Rico.[158]

The Court further observed and concluded:

> Moreover, Vaello Madero's position would usher in potentially far-reaching consequences. For one, Congress would presumably need to extend . . . many other federal benefits programs to the residents of the Territories in the same way that those programs cover residents of the States. And if this Court were to require identical treatment on the benefits side, residents of the States could presumably insist that federal *taxes* be imposed on residents of Puerto Rico and other Territories in the same way that those taxes are imposed on residents of the States. Doing that, however, would inflict significant new financial burdens on residents of

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[157] 596 U.S. at 164–65.

[158] *Id.* at 165 (citations omitted).

> Puerto Rico, with serious implications for the Puerto Rican people and the Puerto Rican economy. The Constitution does not require that extreme outcome.[159]

Thus, these federal benefit rulings render the discrimination argument futile because territorial autonomy was a nonissue in each one of those decisions.

2. The Power to Vote in Federal Elections

A variation of the discrimination argument is the current inability of territorial residents to participate in federal elections. Under the *status quo*, U.S. citizens residing in Puerto Rico cannot cast their vote for U.S. presidential or vice-presidential candidates, nor have voting representatives in Congress.[160] Consequently, there is a tendency to believe that the voting limitation creates a colonial condition by forcing Puerto Ricans to be disenfranchised.[161]

In the 1965 decision of *Katzenbach v. Morgan*,[162] SCOTUS addressed the voting variant of the discrimination argument. Here, SCOTUS agreed that Puerto Ricans relocating to the mainland possess the unqualified constitutional right to partake in national elections.[163] As a result, the *Katzenbach* court found unconstitutional a New York english literacy test that disqualified the vote of non-English speaking Puerto Ricans who had "migrated the Commonwealth of Puerto Rico to New York."[164] SCOTUS further noted: "This enhanced political power will be helpful for the entire Puerto Rican community. Section 4 (e) thereby enables the Puerto Rican minority to obtain 'perfect equality of civil rights and the equal protection of the laws."[165] Hence, contrary to popular belief, Puerto Ricans are U.S. citizens with federal suffrage rights.

In *Igartua de la Rosa v. United States*,[166] the First Circuit Court of Appeals faced the question of whether U.S. citizens residing in Puerto Rico could vote in national elections. According to the petitioners, the inability to vote in Presidential elections violated their constitutional rights.[167] The court rejected the petitioners' contention noting that the Constitution states that "the President is to be chosen by electors who, in turn, are chosen by 'each state.'"[168] It added that the Constitution does not empower citizens "to vote directly for the President"—"only citizens

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[159] 596 U.S. at 165–66.

[160] Anthony M. Ciolli & Dana M. Hrelic, *Third-Class Citizens: Unequal Protections within the United States Territories*, 55 SUFFOLK U.L. REV. 179, 183 (2022).

[161] José A. Cabranes, *Citizenship and the American Empire*, 127 U. PA. L. REV. 391, 398 (1978).

[162] *See* 384 U.S. 641 (1965).

[163] *Id.*

[164] *Id.* at 652.

[165] *Id.* at 652–53.

[166] Brief for the United States in Opposition, Igartua de la Rosa v. United States, 384 U.S. 641 (2005) (No. 05-650).

[167] *Id.*

[168] *Id.* at 2, 8.

residing in states can vote for electors and thereby indirectly for the President."[169] Article II of the Constitution cannot empower Puerto Rico to choose electors to vote for Presidential candidates because Puerto Rico is not a state.[170] Consequently, the voting limitation U.S. citizens face while residing in Puerto Rico is based on the fact that States, not people, participate in presidential elections.[171] Therefore, the issue is not whether Puerto Ricans are second-class citizens. Instead, a constitutional text codifying an electoral tradition predating the PR-US nexus is the root cause of the voting limitation. Contrary to what the discrimination argument presumes, this limitation is reversible at will because, as SCOTUS noted in the *Califano* decision: "there is a virtually unqualified right to travel between Puerto Rico and any of the 50 States."[172]

In conclusion, SCOTUS established that attempts to use the voting limitation argument to qualify the *status quo* as a colonial setting are misguided. The Court's rulings settled the voting issue by establishing how Puerto Ricans have the same constitutional rights and limitations to vote as any other U.S. citizens under equal circumstances. Therefore, the voting issue is *non sequitur*.

3. Sovereignty Within a Double-Jeopardy Context

In recent years, the issue of territorial sovereignty reached new levels of debate. Proponents of the *status quo* argue that the commonwealth elevated Puerto Rico from the unincorporated territorial status framed under the *Insular Cases*.[173] However, contrary beliefs draw apparent support from the Puerto Rico Supreme Court's (PRSC) rationale in *Puerto Rico v. Sánchez-Valle*.[174] The PRSC reasoned that since Congress's plenary powers kept Puerto Rico as a non-sovereign territory, Puerto Rico did not qualify for the double jeopardy exception.[175] SCOTUS held that Puerto Rico does not qualify for the double jeopardy exception but rejected the view that Puerto Rico does not have political sovereignty.[176] SCOTUS recognized that Puerto Rico's wide-ranging self-rule supporting its legal autonomy since the mid-20th century.[177] However, in a double jeopardy context, sovereignty operates outside its ordinary meaning.[178] The applicable sovereignty test disregards the extent of control that one jurisdiction may have over the other.[179] Instead, the dispositive factor is the "ultimate source" of a jurisdiction's prosecutorial power.[180]

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[169] Brief for the United States in Opposition, *supra* note 166, at 2, 8.
[170] *Id.*
[171] *Id.* at 9.
[172] *Califano*, 435 U.S. at 4.
[173] Colón, *supra* note 15, at 107.
[174] 136 S. Ct. 1863, 1875–76 (2016).
[175] *Id.* at 1880.
[176] *Id.* at 1876–77.
[177] *Id.* at 1874.
[178] *Id.* at 1870.
[179] 136 S. Ct. at 1866–67.
[180] *Id.* at 1868.

In this context, when two jurisdictions draw their powers from a common source, double jeopardy protections will apply.[181]

In this case, Puerto Rico cannot be considered a separate sovereign[182] because its "ultimate source" originates from the U.S. government.[183] SCOTUS noted that "because Congress authorized and approved [Puerto Rico's] Constitution, from which prosecutorial power now flows. . . . the Commonwealth and the United States are not separate sovereigns."[184] Thus, a proper understanding of *Sánchez-Valle* should dispel suspicions about Puerto Rico's lack of autonomy under the *status quo*. The decision in *U.S. v. Maldonado-Burgos*[185] crystalized this point when holding that Puerto Rico's autonomy is comparable to a state for the application of the Mann Act.

IV. CONCLUSION

As observed earlier, the challenging nature of the PR-US nexus is undeniable. Facing this situation, the present commentary recognized legal objections to Puerto Rico's relationship with the United States. While attacks on this relationship vary, this commentary addressed the question of whether Puerto Rico's territorial status represents a colonial condition requiring legal modification(s). To offer an adequate response to the colonial question, this commentary employed a fact-based theoretical framework to successfully offer an objective refutation to the colonial charges continuously raised against Puerto Rico's *status quo*. To this end, the evidence established that no changes to the *status quo* are legally required because Puerto Rico has been a decolonized territory since the 1950s. This outcome rests on three emerging issues settled in the discussion.

The first dispositive issue resolved in this commentary was the legitimacy of Spain's power to transfer Puerto Rico to the United States. Objections against the legitimacy of this action pivot on the idea that Spain could not vest title because, under the Charter of 1897, Puerto Rico was an independent sovereign. The content analysis of the Charter demonstrated that Spain only delegated limited powers to designated insular agents and never surrendered title/ownership rights to Puerto Rico. As the title holder, Spain had the power to transfer Puerto Rico to the United States as a state party of the Treaty of Paris. Consequently, attacking the legitimacy of title-vesting actions under the Treaty of Paris is an objection to the *status quo* without legal merit(s).

The second consequential matter settled in this commentary involved the legal evolution of Puerto Rico's legal identity under the U.S. flag. The evidence disclosed an unavoidable trail the United States and the people of Puerto Rican walked together to willfully institute in Puerto Rico a decolonized form of self-

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[181] 136 S. Ct. at 1871.

[182] *Id.* at 1876 (compared the sovereignty relationship between the United States and Puerto Rico to that of a State and a municipality).

[183] *Id.* at 1865.

[184] 136 S. Ct. at 1876.

[185] 844 F.3d 339, 350 (1st Cir. 2016).

government. Based on these events, the United Nations adjudicated the case of Puerto Rico by declaring this U.S. commonwealth a decolonized territory. The United Nations memorialized its accreditation of Puerto Rico's decolonized status by (1) issuing Resolution 748 and (2) removing Puerto Rico from the list of non-self-governing territories.

The third factor reinforcing this commentary's defense involved contemporary SCOTUS decisions resolving constitutional questions that attempted to clothe Puerto Rico with colonial garments. The evidence demonstrated that attacks against Puerto Rico's autonomy via allegations of constitutional discrimination, voting limitations, or even the inapplicability of double jeopardy exclusions have been unsuccessful. Indeed, the autonomy factor is a nonissue in SCOTUS' dispositions of these attacks; not to mention that in its ruling on the double jeopardy matter, the Court recognized and affirmed Puerto Rico's political sovereignty.

Hence, the evidence advancing this commentary allows the PR-U.S. nexus, as it stands today, to survive colonial charges. However, this result does not suggest that the status quo is the best legal formula for Puerto Rico. Instead, the fact to note in closing is that changing the status quo may be a subject for negotiation but not an obligation owed under international law—as dissenting groups erroneously claim.