

# Delaying Puerto Rican Self-Determination: How the Contradictory Mandates of Public Law 600 and PROMESA Undermine America's Founding Principle

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*"I am skeptical that the Constitution countenances this freewheeling exercise of control over a population that the Federal Government has explicitly agreed to recognize as operating under a government of their own choosing, pursuant to a constitution of their own choosing. Surely our Founders, having labored to attain such recognition of self-determination, would not view that same recognition with respect to Puerto Rico as a mere act of grace."*<sup>1</sup>

## I. INTRODUCTION

United States presidents have consistently claimed self-determination as an American idea dating back to the nation's anticolonial founding.<sup>2</sup> Indeed, the Declaration of Independence envisioned a form of government deriving its "just powers from the consent of the governed."<sup>3</sup> Undoubtedly, the American founders intended to establish a government founded by, and for, the people of the United States.<sup>4</sup> At the time of the government's founding, however, the people of the United States entitled to vote included only a handful of property-owning or tax-paying white males.<sup>5</sup> Over the next two-and-a-half centuries, the expansion of voting rights slowly extended self-determination to individuals

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1. *Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1683 (2020) (Sotomayor, J., concurring).

2. See Brad Simpson, *The United States and the Curious History of Self-Determination*, 36 *DIPLOMATIC HIST.* 675, 675 (2012) (noting American presidents claiming self-determination "a peculiarly American idea"). *Black's Law Dictionary* defines self-determination as "[t]he right of the postcolonial populations of the world's countries to be free to decide for themselves how they wish to be governed in a decolonized world." *Right of Self-Determination for Peoples*, *BLACK'S LAW DICTIONARY* (11th ed. 2019).

3. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

4. See THE FEDERALIST NO. 39 (James Madison) (discussing importance of self-governance to republican principles). James Madison took particular care to explain America's status as a republic, defining a republic to be "a government which derives all its powers directly . . . from the great body of the people." See *id.*

5. See Steven Mintz, *Winning the Vote: A History of Voting Rights*, THE GILDER LEHRMAN INST. OF AM. HIST. (2004), <https://www.gilderlehrman.org/history-resources/essays/winning-vote-history-voting-rights> [<https://perma.cc/G77D-M7LT>] (listing narrow class of eligible voters on eve of American Revolution).

outside this elite, elevated class.<sup>6</sup> Though the Twenty-sixth Amendment guarantees U.S. citizens aged eighteen or older the right to vote, the Supreme Court has devised an exception for American citizens of majority age living in U.S. territories.<sup>7</sup>

Puerto Rico, the United States' oldest territorial possession, is an island comprised of federally disenfranchised American citizens—they are constitutionally prohibited from any meaningful engagement in federal politics because there are no voting representatives for Puerto Rico in either the House of Representatives or the Senate, and Puerto Rican-American citizens cannot vote for President.<sup>8</sup> Currently, Puerto Rico's citizens are suffering from a crippling debt crisis exacerbated by the onslaught of Hurricanes Irma and Maria in 2017, as well as the COVID-19 pandemic.<sup>9</sup> The federal government's attempts to financially aid Puerto Rico underscore the fact that Puerto Rico's inhabitants have never enjoyed self-determination as a territory operating under the plenary powers of Congress.<sup>10</sup> Members of Congress and grassroots organizations across Puerto Rico urge the American public to recognize the

6. *See id.* (discussing expansion of voting rights). Voting rights, however, were not swiftly extended to all United States citizens, and the efforts of those disenfranchised in fighting for the right to vote are significant. *See id.* For example, the women's suffrage movement began in 1848 and only found success seventy-two years later with the ratification of the Nineteenth Amendment in 1920. *See id.*; U.S. CONST. amend. XIX (preventing infringement of voting rights on basis of sex). The movement was a categorical slow-burner—encountering a sexist Supreme Court decision decided by an all-male Court in 1872—as it took a world war to adequately convince enough influential Americans to enable women's suffrage. *See Mintz, supra* note 5 (illustrating passage of Nineteenth Amendment). The movement for equality and equity in voting rights for Black and Brown Americans persists to this day, as voter suppression efforts in the last few election cycles increased. *See generally* Theodore R. Johnson, *The New Voter Suppression*, BRENNAN CTR. FOR JUST. (Jan. 16, 2020), <https://www.brennancenter.org/our-work/research-reports/new-voter-suppression> [<https://perma.cc/YTE6-4RFF>].

7. *See* U.S. CONST. amend. XXVI (prohibiting abridgement of right to vote for U.S. citizens of majority age). *See generally* Tom C.W. Lin, *Americans, Almost and Forgotten*, 107 CALIF. L. REV. 1249 (2019) (discussing disenfranchisement of U.S. citizens residing in unincorporated territories).

8. *See* Ángel R. Oquendo, *At Rock Bottom: Puerto Rico's Crises and Self-Determination*, 41 HARBINGER 255, 256 (2017), [https://socialchangenyu.com/wp-content/uploads/2021/08/angel-oquendo\\_RLSC-The-Harbinger-41.pdf](https://socialchangenyu.com/wp-content/uploads/2021/08/angel-oquendo_RLSC-The-Harbinger-41.pdf) [<https://perma.cc/EGS8-VV5Z>] (discussing inherent inequity of Puerto Rico's political status); *see also* Igartúa v. United States, 626 F.3d 592, 594 (1st Cir. 2010) (holding Puerto Rico's citizens have no constitutional right to vote in House of Representatives elections); Igartúa de la Rosa v. United States, 32 F.3d 8, 9 (1st Cir. 1994) (per curiam) (holding only U.S. citizens residing in states can vote in presidential elections).

9. *See* Yasmeen Serhan, *Puerto Rico Files for Bankruptcy*, ATLANTIC (May 3, 2017), <https://www.theatlantic.com/news/archive/2017/05/puerto-rico-files-for-bankruptcy/525258/> [<https://perma.cc/6VDK-GSKD>] (describing type of bankruptcy Puerto Rico declared); Amelia Cheatham, *Puerto Rico: A U.S. Territory in Crisis*, COUNCIL ON FOREIGN RELS. (Feb. 13, 2020), <https://www.cfr.org/backgrounder/puerto-rico-us-territory-crisis> [<https://perma.cc/9LNT-ATYX>] (emphasizing Hurricane Maria and earthquake's effects on Puerto Rico's economic crisis); Sofia Perez Semanaz, *The Impact of the COVID-19 Pandemic in Puerto Rico*, AM. UNIV. (Nov. 1, 2020), <https://www.american.edu/cas/news/catalyst/covid-19-in-puerto-rico.cfm> [<https://perma.cc/PS8J-96TG>] (discussing effects of COVID-19 on Puerto Rico).

10. *See* Oquendo, *supra* note 8, at 255 (arguing for Puerto Rican self-determination); *see also* Pedro Reina Pérez, *El ocaso de la democracia en Puerto Rico* [*The Decline of Democracy in Puerto Rico*], N.Y. TIMES (Oct. 12, 2016), <https://www.nytimes.com/es/2016/10/12/espanol/opinion/el-ocaso-de-la-democracia-en-puerto-rico.html> [<https://perma.cc/26HB-NJBV>] (asserting federal government “lacks legitimacy and ethical grounds” in light of Puerto Rico's subordinate status).

growing necessity for Puerto Rican self-determination, calling attention to Puerto Rico's fundamental problem from which almost all others stem.<sup>11</sup>

This Note serves as a critique of the United States' hypocrisy in governing the territory of Puerto Rico.<sup>12</sup> First, this Note examines the colonial United States–Puerto Rico relationship by walking through the many judicial interpretations and congressional exercises undertaken in an effort to ascertain Puerto Rico's constitutional status.<sup>13</sup> This Note then considers the current condition of the island's economy by addressing recent federal legislation intended to mitigate Puerto Rico's debt crisis.<sup>14</sup> This Note goes on to analyze how this legislation is inconsistent with the constitutional status that the Supreme Court previously assigned to Puerto Rico.<sup>15</sup> Finally, this Note concludes by advocating for the prioritization of Puerto Rican self-determination.<sup>16</sup>

## II. HISTORY

### *A. From Colony to Compact: The Island Before Public Law 600*

#### *1. The Insular Cases*

At the conclusion of the Spanish–American War, the United States acquired Puerto Rico as a territory.<sup>17</sup> For the first time, the United States possessed land noncontiguous with the North American continent.<sup>18</sup> Incidental to the acquisition of an island separated from mainland America by considerable oceanic distance was the constitutional question of how the federal government

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11. See Nydia Velázquez & Alexandria Ocasio-Cortez, *Puerto Rico, Not Congress, Must Determine Its Future. Our Bill Enables It Do So.*, NBC NEWS (Aug. 25, 2020, 11:48 AM), <https://www.nbcnews.com/think/opinion/puerto-rico-not-congress-must-determine-its-future-our-bill-ncna1238032> [<https://perma.cc/52H4-9PZF>] (discussing proposal of Puerto Rican Self-Determination Act); Camila Bustos, Note, *The Third Space of Puerto Rican Sovereignty: Reimagining Self-Determination Beyond State Sovereignty*, 32 YALE J.L. & FEMINISM 73, 92-94 (2020) (discussing grassroots efforts of Feminista Colectiva en Construcción in drawing attention to self-determination); Juan R. Torruella, Commentary, *Why Puerto Rico Does Not Need Further Experimentation With Its Future: A Reply to the Notion of "Territorial Federalism,"* 131 HARV. L. REV. F. 65, 67 (2018) (asserting Puerto Rico's problems emanate from its "interminable colonial dilemma").

12. See *infra* Part III (criticizing United States' hypocritical governance of Puerto Rico).

13. See *infra* Sections II.A-C (examining judicial and congressional understandings of United States–Puerto Rico relationship).

14. See *infra* Sections II.D-E (addressing current economic conditions of Puerto Rico).

15. See *infra* Part III (analyzing inconsistencies in congressional action).

16. See *infra* Part IV (advocating for Puerto Rican self-determination).

17. See Treaty of Paris, Spain-U.S., art. II, Dec. 10, 1898, 30 Stat. 1754 (ceding "Porto Rico"). Spain also ceded the Philippine Islands and Guam to the United States. See *id.*; *id.* art. III.

18. See Juan A. Torruella, *The Insular Cases: The Establishment of a Regime of Political Apartheid*, 29 U. PA. J. INT'L L. 283, 288-89 (2007) (describing uniqueness of U.S. territories acquired after Spanish–American War). Prior to the Spanish–American War, the Caribbean and the Pacific were geographic areas of acquisitional interest to the United States, despite the Spanish Empire exercising exclusive reign over most of those lands and peoples. See *id.* at 288 (implying motives for declaring war against Spain).

could govern the island's inhabitants.<sup>19</sup> In 1901, the Supreme Court first attempted to answer this question by handing down a line of decisions, collectively referred to as the *Insular Cases*, that laid the groundwork for the present-day colonial United States–Puerto Rico relationship.<sup>20</sup>

Of these cases, *Downes v. Bidwell* was central in establishing Puerto Rico's constitutional status.<sup>21</sup> The narrow constitutional question in *Downes* was whether a federal tax on goods shipped from Puerto Rico violated the Constitution's Uniformity Clause, which requires congressional taxes to be uniform throughout the country.<sup>22</sup> In concluding that the tax on Puerto Rican goods was valid even though it was unique to Puerto Rico, the Court ultimately answered the broader constitutional question of whether territories are considered a part of the United States.<sup>23</sup>

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19. See *id.* at 288-89, 291 (questioning method of governing newly acquired territories). The United States' acquisition of Puerto Rico was distinct from previous territorial acquisitions in that there were almost no U.S. citizens residing in Puerto Rico when the change in sovereignty occurred. See *id.* at 289. For the first time, the United States acquired sovereignty over lands "inhabited by large numbers of subject peoples of different races, languages, cultures, religions, and legal systems than those of the then-dominant Anglo-Saxon society of the United States." See *id.*; see also Rafael Hernández Colón, *The Evolution of Democratic Governance Under the Territorial Clause of the U.S. Constitution*, 50 SUFFOLK U. L. REV. 587, 588 (2017) (noting "unique culture and national identity" of Puerto Rico).

20. See Torruella, *supra* note 18, at 300-12 (discussing factual circumstances and reasonings of *Insular Cases*). Six cases, each decided in 1901, comprise the *Insular Cases*: *De Lima v. Bidwell*, *Goetze v. United States*, *Dooley v. United States*, *Armstrong v. United States*, *Downes v. Bidwell*, and *Huus v. New York & Porto Rico Steamship Co.* See *id.* at 284 n.4 (identifying *Insular Cases*); see also *De Lima v. Bidwell*, 182 U.S. 1, 196 (1901) (holding Puerto Rico technically not organized territory); *Goetze v. United States*, 182 U.S. 221, 221-22 (1901) (implementing Court's holding in *De Lima*); *Dooley v. United States*, 182 U.S. 222, 236 (1901) (holding Spain ceased authority over Puerto Rico on treaty ratification date); *Armstrong v. United States*, 182 U.S. 243, 244 (1901) (implementing Court's holding in *Dooley*); *Downes v. Bidwell*, 182 U.S. 244, 287 (1901) (holding Puerto Rico not part of United States for purposes of Revenue Clause); *Huus v. N.Y. & P.R. S.S. Co.*, 182 U.S. 392, 397 (1901) (holding Puerto Rico part of United States for purposes of domestic trade). Most of these decisions arose from import and export taxes levied on both Puerto Rican and mainland United States merchants. See Torruella, *supra* note 18, at 303-06. The Supreme Court was largely split when deciding these cases, with only one unanimous decision and five-to-four majorities deciding the other five. See *id.* at 300 (discussing Supreme Court makeup during *Insular Cases*).

21. See Torruella, *supra* note 18, at 305 (describing significance of *Downes*).

22. See *Downes*, 182 U.S. at 249 (outlining constitutional issues presented); U.S. CONST. art. I, § 8 (declaring "all Duties, Imposts, and Excises shall be uniform throughout the United States"). The Foraker Act, Congress's first attempt to govern Puerto Rico and its inhabitants, included the contested federal tax. See Foraker Act, ch. 191, § 3, 31 Stat. 77, 77-78 (1900) (repealed 1950) (imposing tax on "all merchandise coming into the United States from Porto Rico"). *Downes* claimed that when the United States acquired Puerto Rico in the treaty that concluded the Spanish–American War, Puerto Rico became a part of the United States and, as such, the federal export tax on Puerto Rican goods violated the Uniformity Clause. See *Downes*, 182 U.S. at 248-49 (summarizing *Downes*'s argument).

23. See *Downes*, 182 U.S. at 287 (summarizing conclusion). The *Downes* majority opinion, which Justice Brown authored, articulated that while Puerto Rico is "a territory appurtenant and belonging to the United States," the island was not part of the United States for purposes of the Revenue Clause. See *id.* Concerned with the protection of the "American empire," Justice Brown reasoned that territorial possessions belonging to the United States "inhabited by alien races, differing from [Anglo-Saxon Americans] in religion, customs, laws, methods of taxation, and modes of thought," were determined to be a part of the United States only by the will of Congress. See *id.* at 286-87.

Justice White’s concurring opinion elaborated on this broader constitutional question through the doctrine of territorial incorporation—the prevailing rule of the *Insular Cases*—that delineates the framework for determining whether a particular constitutional provision applies to a territory by labeling it as either incorporated or unincorporated in the United States.<sup>24</sup> Incorporated territories are those that the federal government deems destined for statehood; because Congress considers them an integral part of the United States, the Constitution applies fully to those incorporated territories.<sup>25</sup> For example, a territory the United States acquired through a treaty explicitly providing for the incorporation of the territory is an incorporated territory.<sup>26</sup> In contrast, for territories the United States acquired under a treaty with no conditions for incorporation, or where such conditions expressly prohibit incorporation, “incorporation does not arise until in the wisdom of Congress it is deemed that the acquired territory has reached that state where it is proper that it should enter into and form a part of the American family.”<sup>27</sup> In the eyes of the Supreme Court and Congress, Puerto Rico today remains separate from the “American family” as an unincorporated territory.<sup>28</sup>

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24. See *id.* at 299 (White, J., concurring) (questioning whether United States incorporated Puerto Rico); see also Abbott Lawrence Lowell, *The Status of Our New Possessions—A Third View*, 13 HARV. L. REV. 155, 173-76 (1899) (suggesting territorial incorporation doctrine applies to newly acquired territories). While Justice White formally legitimized the territorial incorporation doctrine in *Downes*, Abbott Lawrence Lowell’s *Harvard Law Review* article first introduced the idea that territorial incorporation could be applicable to the United States’ territorial possessions. Compare Lowell, *supra*, at 176, with *Downes*, 182 U.S. at 299 (White, J., concurring).

25. See Torruella, *supra* note 18, at 308 (articulating incorporation doctrine); *Downes*, 182 U.S. at 336 (White, J., concurring) (inferring incorporation of territory leads to eventual statehood). Justice White rejected the theory that “no territory . . . can be acquired which does not contemplate statehood” on the grounds that such reasoning is based on politics. See *Downes*, 182 U.S. at 311-12. He did, however, concede that even if “no territory, as a general rule, should be acquired unless the territory may reasonably be expected to be worthy of statehood,” the judiciary cannot involve itself in political decisions regarding when incorporation occurs. See *id.* at 312.

26. See *Downes v. Bidwell*, 182 U.S. 244, 341 (1901) (White, J., concurring) (asserting incorporation flows from language of acquisition treaties). “Because a provision for incorporation when ratified incorporates, therefore a provision against incorporation must also produce the very consequence which it expressly provides against.” See *id.*; see also Treaty of Paris, *supra* note 17, art. IX (declaring “political status” of native Puerto Ricans “shall be determined by the Congress”). By designating Congress as the decider of the political status for the native inhabitants of Puerto Rico, the treaty acquiring Puerto Rico expressly provided against incorporation. See *Downes*, 182 U.S. at 340 (White, J., concurring). Therefore:

Porto Rico was not a foreign country, since it was subject to the sovereignty of and was owned by the United States, it was foreign to the United States in a domestic sense, because the island had not been incorporated into the United States, but was merely appurtenant thereto as a possession.

*Id.* at 341-42.

27. *Downes*, 182 U.S. at 339. In declaring that Congress holds the power to determine incorporation status of territories, multiple justices expressed concerns that automatic incorporation may force the United States to accept “alien races”—like the native inhabitants of Puerto Rico—into the American family even if they were “utterly unfit for American citizenship.” See *id.* at 287 (majority opinion); *id.* at 311 (White, J., concurring).

28. See Lin, *supra* note 7, at 1250-51 (emphasizing inequities stemming from unincorporation); see also *Boumediene v. Bush*, 553 U.S. 723, 759 (2008) (implying doctrine from *Insular Cases* remains good law). When

## 2. *Citizenship for Puerto Ricans*

The Territorial Clause of the Constitution grants Congress plenary powers to “make all needful Rules and Regulations respecting . . . territory or other property belonging to the United States.”<sup>29</sup> In an exercise of this power, Congress enacted the Jones–Shafroth Act on March 2, 1917, which gave Puerto Ricans immediate U.S. citizenship.<sup>30</sup> The Jones–Shafroth Act also included a Bill of Rights, similar to the first ten amendments of the U.S. Constitution, guaranteeing certain fundamental rights to the island’s population of newly minted American citizens.<sup>31</sup> The Act further established a popularly elected Puerto Rican Senate and provided for the creation and retention of the elected office of Resident Commissioner to the U.S. Congress, a position with no voting power.<sup>32</sup> Finally, the Jones–Shafroth Act required that important government positions—including those of Governor, Attorney General, and justices on the Supreme Court of Puerto Rico—be filled by presidential appointment with the consent of the Senate.<sup>33</sup>

After the *Insular Cases* established that Congress possesses the power to determine constitutional incorporation for all territories, the Jones–Shafroth Act’s incremental steps toward Puerto Rican self-governance raised expectations of forthcoming incorporation.<sup>34</sup> The Supreme Court quickly shut down these

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given the opportunity to do so, the Supreme Court did not abandon the territorial incorporation doctrine and affirmed its guiding role. See *Boumediene*, 553 U.S. at 759.

29. See U.S. CONST. art. IV, § 3, cl. 2. Gouverneur Morris, drafter of the Territorial Clause, infamously wrote “I always thought that, when we should acquire Canada and Louisiana it would be proper to govern them as provinces, and allow them no voice in our councils. In wording the third section of the fourth article, I went as far as circumstances would permit to establish the exclusion.” See Letter from Gouverneur Morris to Henry W. Livingston (Dec. 4, 1803), in 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 404 (Max Farrand ed., 1911) (discussing congressional power to elevate territory to statehood).

30. See Jones–Shafroth Act of 1917, ch. 145, § 5, 39 Stat. 951, 953 (granting U.S. citizenship to all citizens of Puerto Rico).

31. See *id.* § 2 (listing Bill of Rights). The Jones–Shafroth Bill of Rights differs from the first ten amendments to the U.S. Constitution in that the former includes a child-labor restriction, a mandate that eight hours constitutes a day’s work for government laborers, and a prohibition on nobility. Compare *id.* (outlawing child labor), with U.S. CONST. amends. I–X (containing no child-labor provisions). Like the U.S. Constitution, the Jones–Shafroth Bill of Rights protects freedom of speech, press, religion, and the right of the people to peaceably assemble and petition the government for grievances. See U.S. CONST. amend. I; Jones–Shafroth Act of 1917 § 2 (enumerating rights).

32. Jones–Shafroth Act of 1917 §§ 26, 36 (detailing election of nineteen senators and office of Resident Commissioner). The Act divided Puerto Rico into seven senatorial districts, with each district retaining the right to elect two senators. See *id.* § 26. The remaining five “senators at large” are elected by popular vote across all of Puerto Rico. See *id.* The Act specifies that “[n]o person shall be a member of the Senate of Porto Rico . . . who is not able to read and write either the Spanish or English language.” *Id.*

33. See *id.* § 12, (declaring Governor “shall be appointed by the President . . . with . . . consent of the Senate”); *id.* § 13 (declaring Attorney General “shall be appointed by the President . . . with . . . consent of the Senate”); *id.* § 40 (declaring Supreme Court of Puerto Rico “shall be appointed by the President . . . with . . . consent of the Senate”).

34. See Torruella, *supra* note 11, at 74 (noting hope for status resolution after grant of citizenship); *Downes v. Bidwell*, 182 U.S. 244, 285–86 (1901) (asserting congressional power to determine territorial incorporation).

expectations in *Balzac v. Porto Rico*.<sup>35</sup> Former President William Howard Taft, then Chief Justice of the Supreme Court, authored the majority opinion in *Balzac*, ruling that the Jones–Shafroth Act merely “enabled [Puerto Ricans] to move into the continental United States and becom[e] residents of any state there to enjoy every right of any other citizen of the United States.”<sup>36</sup> Chief Justice Taft further wrote that “it is locality that is determinative of the application of the Constitution . . . and not the status of the people who live in it.”<sup>37</sup> According to the Supreme Court, geography—not American citizenship—controlled whether the Constitution applied to Puerto Rico; following *Balzac*, American citizens residing on the mainland, by virtue of simply existing there, enjoyed greater constitutional protections and freedoms than American citizens residing in Puerto Rico.<sup>38</sup>

### 3. Under Pressure: The Global Pushback Against Colonialism

By the conclusion of World War II—as the world entered a postwar era of decolonization—the formation of the United Nations (UN) forced the United States to address their territorial possessions.<sup>39</sup> Indeed, the UN was founded, in part, “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.”<sup>40</sup> To further this purpose, the UN Charter mandates that member nations in possession of “territories whose peoples have not yet attained a full measure of self-government,” must report statistical information regarding the conditions of their

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35. See 258 U.S. 298, 307-08 (1922) (holding Jones–Shafroth Act “entirely consistent with nonincorporation”).

36. See *id.* at 308. While he was President, Taft “became disenchanted with Puerto Ricans,” and his opinion in *Balzac* “clearly bears his imprint and his personal biases.” See Torruella, *supra* note 18, at 322-23 (explaining former President Taft’s negative personal feelings toward Puerto Ricans stemmed from budget dispute). President Taft endorsed U.S. citizenship for Puerto Ricans on the condition that it be “entirely disassociated from any thought of statehood.” See Juan R. Torruella, *Ruling America’s Colonies: The Insular Cases*, 32 YALE L. & POL’Y REV. 57, 75 (2013) (examining President Taft’s resentment for Puerto Rico’s colonists). In a message to Congress, President Taft stated too much power had been given to Puerto Ricans and accused their elected leaders of political immaturity. See Torruella, *supra* note 18, at 322-23 (noting Taft’s response to Puerto Rico’s budgetary crisis). Unfortunately for the U.S. citizens of Puerto Rico, Chief Justice Taft was arguably the most influential Chief Justice in the history of the Supreme Court. See *id.* at 323 (positing Taft’s unmatched power).

37. *Balzac*, 258 U.S. at 309.

38. See *id.* (claiming locality trumps citizenship status in determining applicability of constitutional provisions). But see *Reid v. Covert*, 354 U.S. 1, 18-19 (1957) (holding constitutional protections apply to U.S. citizens residing overseas).

39. See 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, 1039 n.256 (1994) (inferring political climate drew attention to Puerto Rico’s colony status).

40. See U.N. Charter art. 1, ¶ 2 (asserting purpose of UN). In furtherance of the “principle of equal rights and self-determination of peoples,” the UN promotes upward economic development, social progress, and a universal respect for human rights and fundamental freedoms. See *id.* art. 55 (detailing economic and social operation purposes). “All members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth . . .” *Id.* art. 56.

colonies to the Secretary General.<sup>41</sup> The United States was, and still is, bound by the terms of the UN Charter.<sup>42</sup>

In compliance with the UN Charter's commitments, Congress passed the Elective Governor Act in 1947, which provided for the popular election of the Governor of Puerto Rico.<sup>43</sup> In 1948, the people of Puerto Rico elected their first Governor, Luis Muñoz Marín.<sup>44</sup> Governor Muñoz Marín, together with then-Resident Commissioner Antonio Fernós-Isern, began to develop theories upon which the United States and Puerto Rico could alter their relationship to provide Puerto Rico with greater levels of self-governance, with the "compact" theory gaining traction over the next several years.<sup>45</sup>

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41. *See id.* art. 73(e) (requiring reports on colonial possessions). Specifically, the UN Charter requires member nations in possession of territories to report "information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible." *See id.* At the formation of the UN, the United States was in possession of six territories that were not self-governing: Alaska, American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands. *See* Gary Lawson & Robert D. Sloane, *The Constitutionality of Decolonization by Associated Statehood: Puerto Rico's Legal Status Reconsidered*, 50 B.C. L. REV. 1123, 1142 n.100 (2009) (listing U.S. territories not self-governing in 1952).

42. *See* Lawson & Sloane, *supra* note 41, at 1125-26 (noting Supremacy Clause obliges United States to UN Charter commitments). The Supremacy Clause declares that "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land." U.S. CONST. art. VI, § 2 (binding United States to commitments of UN Charter). The United States, however, was resistant to committing to the idea of self-determination in binding treaty form. *See* Frederic L. Kirgis, Jr., Editorial Comment, *The Degrees of Self-Determination in the United Nations Era*, 88 AM. J. INT'L L. 304, 304 (1994) (discussing United States' hesitation regarding self-determination). Despite the United States' misgivings about self-determination, commitment to the principle made its way into the UN Charter. *See supra* note 40 and accompanying text (detailing relevant self-determination commitments).

43. *See* Elective Governor Act, ch. 490, § 1, 61 Stat. 770, 770-71 (1947) (establishing elective office for Governor of Puerto Rico). Legislators wrote the Elective Governor Act to amend certain provisions of the Jones-Shaftroth Act. *See id.* Prior to the Elective Governor Act, the Jones-Shaftroth Act required the President to appoint the Governor of Puerto Rico, whom the U.S. Senate then confirmed. *See* Jones-Shaftroth Act of 1917, ch. 145, § 12, 39 Stat. 951, 955. In addition to repealing this provision of the Jones-Shaftroth Act, the Elective Governor Act established yet another presidentially appointed officer, the "Coordinator of Federal Agencies in Puerto Rico." *See* Elective Governor Act § 6.

44. *See* Calvert Magruder, *The Commonwealth Status of Puerto Rico*, 15 U. PITT. L. REV. 1, 7 (1953) (noting election of Governor Luis Muñoz Marín). The election of Governor Muñoz Marín was the first time in U.S. history that a territorial governor was elected by popular suffrage of the territory's people, rather than federally appointed. *See id.* Governor Muñoz Marín advocated for Puerto Rico's independence in the 1920s and 1930s. *See* José Trias Monge, *Plenary Power and the Principle of Liberty: An Alternative View of the Political Condition of Puerto Rico*, 68 REV. JUR. U. P.R. 1, 9 (1999) (providing details of Governor Muñoz Marín's background before taking office).

45. *See* Magruder, *supra* note 44, at 3 (noting Resident Commissioner Fernós-Isern contemplated Puerto Rico's political status); Monge, *supra* note 44, at 9 (stating Governor Muñoz Marín's considered Puerto Rico's "status dilemma"). By the time Governor Muñoz Marín took office in 1949, he was convinced of the political nonviability of both Puerto Rico's independence and statehood. *See* Monge, *supra* note 44, at 9.



*B. From Compact to Commonwealth: Public Law 600's Enactment*

For decades, the political debate over Puerto Rico's status presented the polarized alternatives of either statehood or independence.<sup>46</sup> By the time Governor Muñoz Marín took office, however, not even he was convinced of the viability of either statehood or independence, and a new, third alternative began gaining currency.<sup>47</sup> Governor Muñoz Marín and Resident Commissioner Fernós-Isern articulated and developed this third alternative, known as the “compact” theory, in a series of speeches given between 1946 and 1948.<sup>48</sup> Essentially, the compact theory was the notion that the Jones–Shafroth Act and the Elective Governor Act of 1947 were not merely acts of Congress; rather, they were treaties—not in the constitutional or international law meaning—but in the ethical sense, in that it would be unjust for Congress to unilaterally alter either act without the consent of Puerto Rico's people.<sup>49</sup> It naturally followed, then, that legislative actions regarding Puerto Rico's status moving forward must also be formed as compacts.<sup>50</sup>

In March of 1950, Resident Commissioner Fernós-Isern introduced House Bill 7674 in the House of Representatives while a companion bill, Senate Bill 3336, was introduced in the Senate, both articulating that they were to be enacted “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.”<sup>51</sup> The House Committee on Public Lands and the Senate Committee on Interior and Insular Affairs both held hearings regarding the bills.<sup>52</sup> Governor Muñoz Marín, the

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46. See David M. Helfeld, *Congressional Intent and Attitude Toward Public Law 600 and the Constitution of the Commonwealth of Puerto Rico*, 21 REV. JUR. U. P.R. 255, 258 (1952) (recalling traditional alternatives of Puerto Rico's status debate).

47. See Monge, *supra* note 44, at 9 (noting Governor Muñoz Marín's lack of faith in viability of Puerto Rico's statehood or independence); Helfeld, *supra* note 46, at 259 (discussing third alternative to traditional status debate). Though Governor Muñoz Marín receives most of the credit for developing the third alternative to Puerto Rico's status dilemma, the compact theory actually originated from Governor Tugwell, one of Puerto Rico's presidentially appointed governors. See Helfeld, *supra* note 46, at 259.

48. See Helfeld, *supra* note 46, at 259 (noting development of compact theory).

49. See *id.* (describing compact theory). *Merriam-Webster* defines compact as “an agreement or covenant between two or more parties.” *Compact*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/compact> [https://perma.cc/73LF-SFY9].

50. See Helfeld, *supra* note 46, at 259 (articulating implication of compact idea).

51. See Act of July 3, 1950 (Public Law 600), ch. 446, § 1, 64 Stat. 319, 319; Helfeld, *supra* note 46, at 261 (explaining bill's introduction in Congress). Because Puerto Rico had—and still has—no representation in the Senate, Senator Joseph C. O'Mahoney from Wyoming and Senator John Marshall Butler from Maryland introduced Senate Bill 3336. See Helfeld, *supra* note 46, at 261. Senator O'Mahoney was the Chairman of the Senate Committee of Interior and Insular Affairs, the committee responsible for holding hearings on bills like Senate Bill 3336. See Torruella, *supra* note 11, at 82 (stating Senator O'Mahoney's Chairman status).

52. See generally *Puerto Rico Constitution: Hearing Before a Subcomm. of the S. Comm. on Interior & Insular Affs. on S. 3336*, 81st Cong. (1950) [hereinafter *Senate Hearings*] (transcribing testimony from Senate hearings); *Puerto Rico Constitution: Hearing Before the Comm. on Pub. Lands on H.R. 7674*, 81st Cong. (1949) [hereinafter *House Hearings*] (transcribing testimony from House hearings). Most of the testimony at the hearings was positive, with senators and governmental representatives speaking highly about the possibility of granting Puerto Rico self-governance. See generally *Senate Hearings*, *supra*; *House Hearings*, *supra*.

principal spokesman on behalf of the bills, argued before the committees that “the ‘fact’ of self-govern[ance] was ahead of the law” and that Puerto Rico’s people already governed Puerto Rico in all matters of local concern.<sup>53</sup> He further voiced that permitting Puerto Rico’s people to vote on acceptance or rejection of Puerto Rico’s relationship with the United States, partnered with the right to create their own constitution, would signify that “the law will catch up with the fact and the United States will receive due credit.”<sup>54</sup> Convinced by the Governor’s sentiments, Congress approved House Bill 7674, relabeling the bill as Public Law 600.<sup>55</sup>

One of the first provisions of Public Law 600 declares its enactment in full recognition of the government-by-consent principle.<sup>56</sup> To effectuate this recognition, Public Law 600 first provided for an island-wide referendum, whereby Puerto Rico’s qualified voters could accept or reject Public Law 600 itself, and in turn, accept or reject the proposed allocation of power: the Puerto Rican government exercising full control over all local matters, and Congress remaining supreme over any matters implicating national concerns.<sup>57</sup> Upon a majority of the participating voters’ approval of Public Law 600, Puerto Rico’s legislature would be authorized to call a constitutional convention to draft the

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Spokesmen in support of both bills involved highly influential representatives from Puerto Rico, including: the Honorable Cecil Snyder, Associate Justice of the Supreme Court of Puerto Rico; the Honorable Victor Gutiérrez, Senator at Large and Floor Leader in the Puerto Rican Senate; and Antonio Fernós-Isem, Resident Commissioner of Puerto Rico. See *Senate Hearings, supra*, at iii; *House Hearings, supra*, at iii.

53. See Helfeld, *supra* note 46, at 261 (discussing Governor Muñoz Marín’s role in advocating for bill). At a later hearing on section 1 of the Act of July 3, 1950 (Public Law 600), where Resident Commissioner Fernós-Isem was the primary advocate for the bill, Chairman O’Mahoney praised Governor Muñoz Marín for his testimony at prior hearings. See *Senate Hearings, supra* note 52, at 2 (mentioning prior hearing testimony). Specifically, the Chairman noted Governor Muñoz Marín “testified very forcefully and eloquently on behalf of the extension of authority to the people of Puerto Rico to adopt their own constitution.” *Id.*

54. See Helfeld, *supra* note 46, at 261.

55. See *id.* at 258 (noting congressional approval of Public Law 600).

56. See Public Law 600 § 1 (declaring recognition of government by consent). In full, the opening language of Public Law 600 reads:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, fully recognizing the principle of government by consent, this Act is now adopted 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.

*Id.*

57. See *id.* § 2 (detailing referendum process); *Senate Hearings, supra* note 52, at 5, 7 (clarifying Public Law 600’s allocation of power). Chairman O’Mahoney posed several questions to Resident Commissioner Fernós-Isem, clarifying Public Law 600’s proposed power allocation and whether the people of Puerto Rico were not only amenable, but supportive of it. See *Senate Hearings, supra* note 52, at 5-7. For example, he asked the Resident Commissioner whether he recognized that Public Law 600, if enacted, “will permit the Government of the United States to continue its active interest in promoting a sound economy for the people of Puerto Rico while at the same time granting them complete local self-government[.]” *Id.* at 7.

island's constitution.<sup>58</sup> The only limitations contained within Public Law 600 regarding the constitution's drafting were the requirement of a republican form of government and the inclusion of a bill of rights.<sup>59</sup> Once the Puerto Rican public adopted the constitution, the President had the authority to transmit the constitution to Congress for approval, pending the President's own finding that the constitution conformed with the applicable provisions of Public Law 600.<sup>60</sup>

In compliance with this process, Puerto Rico's citizens accepted Public Law 600, marking the first time Puerto Rico's inhabitants were able to formally and meaningfully voice their stance on the Puerto Rico–United States relationship.<sup>61</sup> More significantly, this acceptance indicated that Puerto Rico's citizens were prepared to embrace their local government's autonomy over all local matters—Puerto Rico was ripe to achieve a level of self-governance that it had not experienced since the United States' acquisition of the island in 1898.<sup>62</sup> Following Puerto Rico's Constitutional Convention and a two-year drafting and revision process, both President Truman and the 82nd Congress approved Puerto Rico's constitution.<sup>63</sup> In 1952, the Constitution of Puerto Rico became effective, formally establishing the Commonwealth of Puerto Rico.<sup>64</sup>

### *C. From Commonwealth to Confusion: Competing Interpretations of Public Law 600*

In the decades that followed the formation of the Commonwealth of Puerto Rico, legal scholars attempted to deduce what Public Law 600 meant for the Puerto Rico–United States relationship, and two competing interpretations of

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58. See Public Law 600 § 2 (noting creation of constitutional convention). The delegates to the constitutional convention were elected by popular vote of the people of Puerto Rico. See David M. Helfeld, *The Historical Prelude to the Constitution of the Commonwealth of Puerto Rico*, 21 REV. JUR. U. P.R. 135, 149 (1952) (noting election of delegates).

59. See Public Law 600 § 2 (requiring republican form of government and bill of rights).

60. See *id.* § 3 (providing approval process). Public Law 600 provides that the President may transmit the constitution to Congress for approval if “he finds that such constitution conforms with the applicable provisions of this Act and of the Constitution of the United States.” *Id.* This language, though not largely limiting on the delegates' creativity in drafting, is evidence that “imperial attitudes die hard.” See Helfeld, *supra* note 58, at 150.

61. See Helfeld, *supra* note 46, at 267, 272 (describing Puerto Rican citizens' consent to proposed power allocation).

62. See *id.* at 272; *supra* Section II.A (describing governance of Puerto Rico since acquisition).

63. See Helfeld, *supra* note 46, at 258, 273-74 (noting acceptance from mainland government). Congress's main objection with the drafted Puerto Rican constitution was its guarantee of some certain fundamental human rights: public education; the right to work; the right to an adequate standard of living; the right to social protection in case of unemployment sickness, old age, or disability; and the right to special motherhood care. See *id.* at 277, 317 (discussing congressional objection to first two drafts of Puerto Rico's constitution). President Truman, however, provided strong support for Puerto Rico's constitution, transmitting it for congressional approval with a message that stated: “The Constitution of the Commonwealth of Puerto Rico is a proud document that embodies the best of our democratic heritage. I recommend its early approval by Congress.” Special Message to the Congress Transmitting the Constitution of the Commonwealth of Puerto Rico, 1 PUB. PAPERS 285, 287 (Apr. 22, 1952).

64. See Helfeld, *supra* note 46, at 258 (reciting acceptance of Puerto Rico's constitution and creation of Commonwealth status).

Public Law 600 took shape.<sup>65</sup> The first interpretation followed from Resident Commissioner Fernós-Isern and Governor Muñoz Marín's initial compact theory.<sup>66</sup> As its opening language states, Public Law 600 was formed as a bilaterally binding compact and could not be unilaterally revoked like a treaty in the international law or constitutional sense.<sup>67</sup> While the constitutional status of Puerto Rico technically remained unchanged, Public Law 600 functionally altered the relationship between Puerto Rico and the United States because Puerto Rico's government achieved autonomy over local matters, providing Puerto Rico with nearly full self-governance.<sup>68</sup> Indeed, even the Puerto Rican judiciary declared, just one year after the Commonwealth's formation, that "Puerto Rico is, under the terms of the compact, sovereign over matters not ruled by the Constitution of the United States."<sup>69</sup>

The second interpretation was that the Commonwealth enterprise purported by Public Law 600 was a "monumental hoax," and that the Puerto Rico–United States relationship was completely unchanged because the constitutional status of Puerto Rico remained as it was under the *Insular Cases*: subject to the plenary powers of Congress as an unincorporated territory.<sup>70</sup> The United States' request

65. See Torruella, *supra* note 11, at 78, 85-86 (discussing compact and "monumental hoax" theories). Beginning with *Mora v. Torres*, attorneys and the judiciary flouted the interpretations of Public Law 600. See *id.* at 85-86; see also *Mora v. Torres*, 113 F. Supp. 309, 313 (D.P.R. 1953) (summarizing government's "compact" argument). José Triás Monge, Attorney General of Puerto Rico in 1953, was the first to expose compact theory to the courts of Puerto Rico. See Torruella, *supra* note 11, at 85 (illustrating Attorney General Monge's role in promulgating one Public Law 600 interpretation).

66. See *supra* note 48 and accompanying text (noting origins of compact theory).

67. See *supra* note 56 (stating opening language of Public Law 600); *supra* note 49 (articulating initial compact theory). This interpretation is also the United States' official understanding of the nature of Public Law 600. See Monge, *supra* note 44, at 10-11 (articulating United States' stance on Public Law 600). Mason Sears, U.S. delegate to the UN, articulated that:

A most interesting feature of the new constitution is that it was entered into *in the nature of a compact* between the American and Puerto Rican people. A compact, as you know, is stronger than a treaty. . . . [A] compact cannot be denounced by either party unless it has the permission of the other.

*Puerto Rico's New Political Status*, 29 U.S. DEP'T ST. BULL. 392, 392 (1953).

68. See Monge, *supra* note 44, at 10-11 (discussing Puerto Rico's fundamental status change). At a UN hearing on the matter of Puerto Rico's status post-Public Law 600, a U.S. delegate stated:

[T]he relationship between Puerto Rico and the United States [has] not changed. It would be wrong, however, to hold that because this is so and has been so declared in Congress, the creation of the Commonwealth of Puerto Rico has not signified a fundamental change. . . . The present status of Puerto Rico is that of a people with a constitution of their own adoption, stemming from their own authority, which only they can alter or amend.

*Id.*

69. *Mora v. Mejias*, 115 F. Supp. 610, 612 (D.P.R. 1953).

70. See *Figueroa v. Puerto Rico*, 232 F.2d 615, 620 (1st Cir. 1956) (coining monumental hoax phrase). Former Chief Justice of the United States Court of Appeals for the First Circuit, Calvert Magruder, coined the phrase monumental hoax as it related to Public Law 600. See *id.* at 616, 620. This, however, was done in an effort to dismiss concerns over the legitimacy of the effects of Public Law 600, as Chief Justice Magruder

for relief from its reporting obligations to the UN, citing Puerto Rico's apparent achievement of self-governance, chiefly supported this interpretation.<sup>71</sup> While supporters of the compact theory interpretation point to this request as proof of Public Law 600's positive effect, those who believe Public Law 600 was a monumental hoax cite the request as motive for the United States to give its territory the mere appearance of self-governance.<sup>72</sup>

#### D. A Brief History of Puerto Rico's Economy

Prior to Public Law 600, Puerto Rico was an agricultural economy fueled by mega enterprises from Massachusetts, New Jersey, and New York that exploited the island's resources and converted the land into one large sugar plantation.<sup>73</sup> After Puerto Rico's constitution took effect, Puerto Rico began successfully phasing out this agricultural economy in favor of manufacturing and industry.<sup>74</sup> The catalyst to this successful shift was an exceedingly favorable tax incentive Congress provided to U.S. manufacturing companies that established operations in Puerto Rico.<sup>75</sup>

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believed strongly in the compact theory interpretation of Public Law 600. *See id.* at 620 (stating constitution's functional expression of will of Puerto Rican people); Magruder, *supra* note 44, at 16-17 (articulating opinion regarding Public Law 600). On the other hand, Chief Justice Magruder's successor, Chief Justice Juan R. Torruella firmly disagreed with supporters of the compact theory and consistently argued that Public Law 600 was indeed a monumental hoax on the Puerto Rican people and the international community as a whole. *See* Torruella, *supra* note 11, at 85 (arguing pretext to remove Puerto Rico from UN's reporting on self-governance); Torruella, *supra* note 18, at 334 (stating United States does not actually provide self-government rights to Puerto Rico).

71. *See* Monge, *supra* note 44, at 10-11 (discussing UN General Assembly's actions post-Public Law 600); Magruder, *supra* note 44, at 13 (detailing United States' request to UN General Assembly). Governor Muñoz-Marín requested that President Truman seek declassification of Puerto Rico under Article 73(e) of the UN Charter as a territory that is not self-governing. *See* Monge, *supra* note 44, at 10; *see also supra* note 41 and accompanying text (detailing UN reporting requirements). The request was eventually formalized as Resolution 748 and hotly debated before the General Assembly of the UN, as many voiced their strong opposition to the conclusion that Puerto Rico was self-governing under Public Law 600. *See* Monge, *supra* note 44, at 10-11 (arguing no compact between Puerto Rico and United States exists). When debate ceased, the General Assembly approved Resolution 748 by a vote of twenty to sixteen, with eighteen abstentions. *See id.* at 11; G.A. Res. 748 (VIII), at 25-26 (Nov. 27, 1953).

72. *See* Magruder, *supra* note 44, at 12-13 (discussing Public Law 600's relationship with Article 73(e)); Torruella, *supra* note 11, at 85 (arguing Public Law 600's motivations inauthentic); Torruella, *supra* note 18, at 334-35 (inferring ineffectiveness of Public Law 600).

73. *See* Torruella, *supra* note 11, at 74 (discussing Puerto Rico's sugar economy). The "sugar giants" that exploited Puerto Rico's resources garnered nearly 115% annual returns on their initial investments in Puerto Rico's sugar plantations. *See id.* Unfortunately, much of this wealth escaped the island; Puerto Rico's population collected wages at a rate significantly less than workers in the mainland United States and lived well below the poverty level. *See id.* at 74-75 (stating Puerto Rico's annual per capita income one-fifth less than mainland).

74. *See id.* at 90 (noting economy shift).

75. *See id.* (discussing tax incentive's role in expediting Puerto Rico's economic shift); *see also* I.R.C. § 936(a)(1) (repealed 1996) (allowing tax credit to U.S. manufacturing companies with established operations in territories). The statute providing for the favorable incentive mandated certain conditions be met before U.S. companies could benefit from the tax credit. *See* I.R.C. § 936(a)(2). Pharmaceutical companies like Johnson & Johnson, Merck, and Bristol-Meyers benefitted the most from this tax shelter. *See* Torruella, *supra* note 11, at 90, 90 n.181 (noting drug companies' benefit from tax incentive).

Though the tax credit was responsible for bringing about the “golden age for Puerto Rico’s economy,” and creating much-needed employment opportunities for Puerto Rico’s citizens, it had the unexpected consequence of being so successful that it deprived the Department of the Treasury of nearly \$4 billion in tax revenue.<sup>76</sup> Many U.S. companies ended up transferring nearly all their production, patents, and trademarks to Puerto Rico in an effort to shield revenue from federal income taxes.<sup>77</sup> Moreover, an estimated 80,000 mainland U.S. workers lost their jobs due to the relocation—costing local, state, and federal governments \$71 million–\$94 million in foregone tax revenue and increasing welfare and unemployment transfer payments.<sup>78</sup>

Despite “the health of the Puerto Rican economy” being “inextricably intertwined” with the tax incentive, Congress repealed the tax credits in 1996 to regain those lost revenues.<sup>79</sup> Predictably, this repeal caused another massive relocation of U.S. companies to more tax-friendly jurisdictions like Ireland, and, as a result, employment in Puerto Rico plummeted.<sup>80</sup> As these U.S. companies relocated overseas, a large out-migration of Puerto Rican citizens began and continued exponentially over the next two decades.<sup>81</sup>

This out-migration, in turn, hurt Puerto Rico’s tax base, causing the local government to engage in substantial borrowing to pay for social services like public education and healthcare.<sup>82</sup> Years prior, Congress discriminated against Puerto Rico—with judicial approval—in the allocation of federal subsidies based on the island’s constitutional status, yet during the continued out-migration, Congress failed to meaningfully assist Puerto Rico’s citizens as the Puerto Rican government engaged in this borrowing.<sup>83</sup> Despite Puerto Rico never defaulting

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76. See Torruella, *supra* note 11, at 90 (describing corporate prosperity experienced in Puerto Rico); Milo W. Peck, Jr. & Helene W. Johns, *The Death of Section 936: Closing a Loophole or Poor Policy?*, INT’L TAX J., Spring 1961, at 1, 1-2 (noting loss in potential federal revenue increase).

77. See Torruella, *supra* note 11, at 91 (discussing unethical practices of U.S. manufacturing companies seeking tax shelter).

78. See Peck & Johns, *supra* note 76, at 6 (stating impact of tax incentive on mainland U.S. workers).

79. See *id.* at 4 (detailing conundrum tax incentive caused). After a 1993 statehood referendum failed, scholars hypothesized that Puerto Rico’s citizens feared statehood would lead to the repeal of the tax incentive that brought them such economic success. See *id.* at 6 (mentioning reason for failed statehood option).

80. See Torruella, *supra* note 11, at 91 (detailing relocation of U.S. manufacturing companies after tax repeal); John W. Schoen, *Here’s How an Obscure Tax Change Sank Puerto Rico’s Economy*, CNBC (Sep. 26, 2017, 7:15 PM), <https://www.cnbc.com/2017/09/26/heres-how-an-obscure-tax-change-sank-puerto-ricos-economy.html> [<https://perma.cc/KS6M-2THF>] (charting employment decrease).

81. See Torruella, *supra* note 11, at 91 (discussing out-migration of Puerto Rico’s citizens); Jens Manuel Krogstad, *Puerto Ricans Leave in Record Numbers for Mainland U.S.*, PEW RSCH. CTR.: FACT TANK (Oct. 14, 2015), <https://www.pewresearch.org/fact-tank/2015/10/14/puerto-ricans-leave-in-record-numbers-for-mainland-u-s/> [<https://perma.cc/8H9J-LJZL>] (highlighting significant migration patterns of Puerto Rico’s citizens in early 2010s).

82. See Torruella, *supra* note 11, at 91 (detailing necessary government action). Puerto Rico received only about a tenth of the amount of Medicaid funding Congress allocated to states with populations smaller than Puerto Rico’s. See *id.* at 92.

83. See *Califano v. Torres*, 435 U.S. 1, 2 (1978) (per curiam) (holding exclusion of Puerto Ricans from Supplemental Security Income programs constitutional); *Harris v. Rosario*, 446 U.S. 651, 651-52 (1980) (per

on its debt obligations, Wall Street reduced Puerto Rico's debt obligations to junk status, beginning a snowball effect that ultimately caused the island to declare bankruptcy in 2017.<sup>84</sup>

### E. From Public Law 600 to PROMESA: Congress Intervenes

Congress's reaction to the effect of its own draconian decision to repeal the entire tax incentive was not only to legislate more, but to take total control over Puerto Rico's debt crisis by enacting the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA).<sup>85</sup> The language of PROMESA declares the statute's own supremacy over all territorial and state laws, rendering any regulations inconsistent with PROMESA inferior.<sup>86</sup> PROMESA established a Financial Oversight and Management Board (Board), comprised of seven voting members appointed by the American President, without the U.S. Senate's

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curiam) (holding lower federal benefits to Puerto Rico generally constitutional under rational basis test); Dara Lind, *Puerto Rico's Debt Crisis, Explained in 11 Basic Facts*, VOX (Aug. 3, 2015, 5:09 PM), <https://www.vox.com/2015/7/10/8924517/puerto-rico-bankrupt-debt> [<https://perma.cc/9A2T-B6FC>] (noting congressional inaction to remedy Puerto Rico's debt crisis). The Supreme Court in *Califano* determined that excluding Puerto Rico's citizens—namely those qualified by their age, blindness, or disabilities—from receiving aid through Supplemental Security Income programs was constitutional. See *Califano*, 435 U.S. at 2, 5 (summarizing holding). Just two years later in *Harris*, the Court held that it was constitutional to provide Puerto Rico lower federal benefits than those provided to states. See *Harris*, 446 U.S. at 651-52 (summarizing holding). Both decisions remain controlling and guided the Court's limited reasoning in *United States v. Vaello-Madero*, where the Court summarily upheld *Califano*. See *United States v. Vaello-Madero*, No. 20-303, slip op. at 5-6 (U.S. Apr. 21, 2022) (summarizing holding and relying exclusively on precedent).

84. See Torruella, *supra* note 11, at 92-93 (detailing Wall Street's role in Puerto Rico's debt crisis). The reduction to junk status created an unjustified, self-fulfilling prophecy. See *id.* Declaring Puerto Rico could not repay its debt—despite having never defaulted on its debt—triggered acceleration clauses, increased the interest rates at which the local government could borrow, reduced the capital markets available for raising necessary funds, and limited the liquidity and financial flexibility of Puerto Rico's government. See *id.* at 93. In turn, there was little the local government could do to avoid eventually defaulting on its debt, which the island ultimately did. Patrick Gillespie, *Puerto Rico Just Defaulted for the First Time*, CNN BUS. (Aug. 3, 2015, 5:36 PM), <https://money.cnn.com/2015/08/03/investing/puerto-rico-default> [<https://perma.cc/57DW-RF4W>] (discussing Puerto Rico's insufficient creditor payments); Heather Gillers & Nick Timiraos, *Puerto Rico Defaults on Constitutionally Guaranteed Debt*, WALL ST. J. (July 1, 2016, 6:42 PM), <https://www.wsj.com/articles/puerto-rico-to-default-on-constitutionally-guaranteed-debt-1467378242> [<https://perma.cc/5WH4-RMNP>] (discussing Puerto Rico's inability to pay its debt). After defaulting for years, Puerto Rico declared bankruptcy. Mary Williams Walsh, *Puerto Rico Declares a Form of Bankruptcy*, N.Y. TIMES (May 3, 2017), <https://www.nytimes.com/2017/05/03/business/dealbook/puerto-rico-debt.html> [<https://perma.cc/A8JB-ZDY6>] (describing Puerto Rico's bankruptcy proceedings).

85. See Puerto Rico Oversight, Management, and Economic Stability Act, Pub. L. No. 114-187, 130 Stat. 549 (2016) (codified as amended at 48 U.S.C. §§ 2101-2241). Congress's purpose for enacting PROMESA was to “establish an Oversight Board to assist the Government of Puerto Rico, including instrumentalities, in managing its public finances, and for other purposes.” Puerto Rico Oversight, Management, and Economic Stability Act, H.R. 5278, 114th Cong., 130 Stat. 549 (2016).

86. See Puerto Rico Oversight, Management, and Economic Stability Act § 4, 48 U.S.C. § 2103 (declaring supremacy of PROMESA). *But see* Public Law 600, ch. 446, § 1, 64 Stat. 319, 319 (recognizing principle of government by consent).

advice or consent, to administer the provisions of PROMESA.<sup>87</sup> Puerto Rico funds all expenses of the Board, and such expenses are determined at the sole and exclusive discretion of the Board.<sup>88</sup> Moreover, PROMESA requires the Board to appoint an Executive Director to handle the day-to-day operations of the Board.<sup>89</sup> The Executive Director receives a \$625,000 salary that the people of Puerto Rico fund as an expense of the Board.<sup>90</sup>

Notably, multiple provisions of PROMESA strip Puerto Rico's Governor and legislature of any and all powers to make decisions regarding the debt crisis.<sup>91</sup> While the Governor and legislature are authorized to undertake certain menial

87. See Puerto Rico Oversight, Management, and Economic Stability Act § 101(e)(1)(A) (establishing Board); Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC, 140 S. Ct. 1649, 1655 (2020) (holding Board members not U.S. Officers for purposes of Appointments Clause). The Supreme Court considered whether the method of appointing the seven Board members violates the Appointments Clause of the Constitution, which requires the Senate to confirm the "Officers of the United States." See *Aurelius*, 140 S. Ct. at 1654 (summarizing issue); U.S. CONST. art. II, § 2, cl. 2 (declaring appointments procedure). The Court concluded that the term "Officers of the United States" has never been understood to encompass "those whose powers and duties are primarily local in nature," and that because the Board's duties are local to Puerto Rico, they are not subject to the Senate confirmation required by the Appointments Clause. *Aurelius*, 140 S. Ct. at 1654-55. Currently, the Board consists of Chairman David Skeel, and Members Andrew Biggs, Arthur González, Antonio Medina, John Nixon, Justin Peterson, and Betty Rosa. See *About Us*, FIN. OVERSIGHT & MGM'T BD. FOR P.R., <https://oversightboard.pr.gov/about-us/> [<https://perma.cc/AXD3-XXPK>] (listing Board members).

88. See Puerto Rico Oversight, Management, and Economic Stability Act § 107(b) (establishing Board's funding authority). PROMESA demands the Governor transfer at least \$2 million from the island's own funds to a bank account established by and for Board's exclusive use and control. See *id.* § 107(b)(2)(A).

89. See *id.* § 103(a) (requiring appointment of Executive Director). In March 2017, the Board appointed Natalie Jaresko as the Executive Director. See *Natalie Jaresko*, FIN. OVERSIGHT & MGM'T BD. FOR P.R., <https://oversightboard.pr.gov/natalie-jaresko/> [<https://perma.cc/WM2J-WS9F>] (noting Jaresko's appointment). Jaresko was Ukraine's former finance minister, and the Board believed she was best suited for the role of Executive Director because she helped turn around Ukraine's fiscal crisis—which included problems similar to the ones facing Puerto Rico—just a few years prior. See Eva Lloréns Vélez, *Fiscal Board Chairman: Extent of Puerto Rico Crisis Justifies New Executive Director's Salary*, CARIBBEAN BUS. (Mar. 23, 2017), <https://caribbeanbusiness.com/oversight-board-appoints-natalie-jaresko-as-executive-director/> [<https://perma.cc/7NCW-EWLB>] (describing Jaresko's background).

90. See Lloréns Vélez, *supra* note 89 (noting Executive Director's salary); Puerto Rico Oversight, Management, and Economic Stability Act § 103(a) (mandating Board's determination of Executive Director's salary). PROMESA permits the Executive Director to "appoint and fix the pay of additional personnel as the Executive Director considers appropriate, except that no individual appointed by the Executive Director may be paid at a rate greater than the rate of pay for the Executive Director unless the Oversight Board provides otherwise." Puerto Rico Oversight, Management, and Economic Stability Act § 103(b). Most surprisingly, the Executive Director and all Board staff may be appointed and paid regardless of any Puerto Rican laws, including those governing procurement. See *id.* § 103(c).

91. See Puerto Rico Oversight, Management, and Economic Stability Act § 104 (listing Board's powers); *id.* § 108(a) (preventing Puerto Rico's Governor and legislature from asserting autonomy). Specifically, PROMESA states:

Neither the Governor nor the Legislature may—(1) exercise any control, supervision, oversight, or review over the Oversight Board or its activities; or (2) enact, implement, or enforce any statute, resolution, policy, or rule that would impair or defeat the purposes of this chapter, as determined by the Oversight Board.

Puerto Rico Oversight, Management, and Economic Stability Act § 108(a).



tasks relating to Puerto Rico’s debt, PROMESA delegates the exclusive authority to make binding decisions to the Board.<sup>92</sup> Moreover, because certain amendments to the Federal Bankruptcy Code passed in 1984 exclude Puerto Rico from the buffers of Chapter 9 bankruptcy—which regulates municipal bankruptcies—and federal bankruptcy law preempted Puerto Rico’s own debt statutes, PROMESA also establishes a specialized bankruptcy procedure for the island to restructure its debt.<sup>93</sup> And finally, PROMESA includes an unequivocal declaration that nothing contained therein is intended to limit Congress’s legislative authority under the Territorial Clause.<sup>94</sup>

### III. ANALYSIS

#### A. Confirming the Monumental Hoax

PROMESA expressly contradicts Public Law 600 by stripping the local government’s authority to navigate Puerto Rico out of its debt crisis.<sup>95</sup> The allocation of power that Public Law 600 facilitates is akin to traditional American federalism: Puerto Rico’s government is sovereign over all matters of local concern while Congress has the authority over matters that implicate national interests.<sup>96</sup> PROMESA reasserts Congress’s unlimited legislative authority over

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92. See Puerto Rico Oversight, Management, and Economic Stability Act § 104 (listing Board’s powers). “The Oversight Board shall consult with the Governor in establishing a schedule, but the Oversight Board shall retain sole discretion to set or, by delivery of a subsequent notice to the Governor, change the dates of such schedule as it deems appropriate and reasonably feasible.” *Id.* § 201 (reducing Governor’s powers to “consult[ing]”). Moreover:

The Governor may not submit to the Legislature a Territory Budget under section 2142 of this title for a fiscal year unless the Oversight Board has certified the Territory Fiscal Plan for that fiscal year in accordance with this subsection, unless the Oversight Board in its sole discretion waives this requirement.

*Id.* § 201(c)(1).

93. See *id.* §§ 301–317 (establishing specialized bankruptcy procedure); Puerto Rico v. Franklin Cal. Tax-Free Tr., 579 U.S. 115, 117–18 (2016); 11 U.S.C. § 903(1). The Supreme Court determined that Puerto Rico, though not a state of the union, was considered a state for purposes of the Federal Bankruptcy Code that preempts states from restructuring certain debts under Chapter 9 of the Code. See *Franklin Cal.*, 579 U.S. at 117–18 (holding Puerto Rico considered state under certain bankruptcy provisions); 11 U.S.C. § 903(1) (requiring municipalities to restructure certain types of debt under this chapter).

94. See Puerto Rico Oversight, Management, and Economic Stability Act § 401(1) (asserting Congress’s legislative authority); see also *supra* note 29 and accompanying text (discussing Congress’s constitutionally derived plenary powers over U.S. territorial possessions).

95. See Public Law 600, ch. 446, § 1, 64 Stat. 319, 319 (recognizing Puerto Rico’s right of self-governance); Puerto Rico Oversight, Management, and Economic Stability Act § 4 (declaring PROMESA’s supremacy).

96. See Helfeld, *supra* note 46, at 266 (articulating Public Law 600’s proposed power allocation); *supra* note 57 and accompanying text (discussing Congressional intent behind Public Law 600); see also Colón, *supra* note 19, at 605 (noting Congress retains territorial power in federal affairs); Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC, 140 S. Ct. 1649, 1676 (2020) (Sotomayor, J., concurring) (asserting Public Law 600’s legal consequences regarding shift in power allocation). “[T]his Court has recognized on multiple other occasions that Puerto Rico is akin to a State in many key respects.” *Aurelius*, 140 S. Ct. at 1676.

Puerto Rico, yet nothing in PROMESA supports that Puerto Rico's debt crisis specifically necessitates this assertion of power by implicating national interests.<sup>97</sup> Despite being a matter of local concern, the federal government exclusively controls the debt crisis.<sup>98</sup> Meanwhile, the island remains bankrupt and Puerto Ricans have no voting or legislative power, while the Board—hand-picked by the federal government—is currently in exclusive control of the crisis.<sup>99</sup>

This fundamental contradiction between PROMESA and Public Law 600 demands a reexamination of the United States–Puerto Rico relationship, forcing Puerto Rico's local government to reconsider its role in guiding its own people out of their suffering.<sup>100</sup> The island and its people have a handful of paths forward, each with their own benefits and consequences.<sup>101</sup> For one, Puerto Rico's local government can resist PROMESA's assertion of supremacy by citing their own authority under Public Law 600 to govern the local concerns of Puerto Rico.<sup>102</sup> Practically speaking, Puerto Rico's local government could likely only pursue this resistance through litigation, as congressional representation of Puerto Rico remains superficial.<sup>103</sup> Contesting PROMESA's validity in the courts, however, has little chance of success in reestablishing Puerto Rican self-governance, and litigation expenses would only exacerbate the

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97. See Puerto Rico Oversight, Management, and Economic Stability Act § 401(1) (declaring unfettered legislative authority); *id.* § 101(a)–(b) (describing Board's purpose to help Puerto Rico achieve access to capital markets).

98. See *supra* note 97 and accompanying text (reasserting Congress's plenary power).

99. See Puerto Rico Oversight, Management, and Economic Stability Act § 4 (declaring supremacy of PROMESA); *id.* § 101(e) (providing for federal government's selection of Board); *supra* notes 8-9 and accompanying text (describing current economic and political situation of Puerto Rico). By granting the Board unassailable authority to make meaningful decisions related to Puerto Rico's debt, as well as stripping Puerto Rico's people from having a say in determining who serves on the Board, Congress essentially took total control over managing the crisis. See *Aurelius*, 140 S. Ct. at 1683 (Sotomayor, J., concurring). Indeed, the Board is "tasked with determining the financial fate" of Puerto Rico despite the Board being "foisted" upon Puerto Rico by the federal government. See *id.*

100. See *Aurelius*, 140 S. Ct. at 1678-79 (discussing validity of PROMESA). In addressing PROMESA's role in ascertaining Puerto Rico's status, Justice Sotomayor questioned:

May Congress ever simply cede its power under [the Territorial] Clause to legislate for the Territories, and did it do so nearly 60 years ago with respect to Puerto Rico? If so, is PROMESA itself invalid, at least insofar as it holds itself out as an exercise of Territori[al] Clause authority?

*Id.* at 1679.

101. See *infra* text accompanying notes 102, 104-05 (discussing options available to Puerto Rico).

102. See Public Law 600, ch. 446, § 1, 64 Stat. 319, 319 (stating intent of enactment); Puerto Rico Oversight, Management, and Economic Stability Act § 4 (declaring supremacy).

103. See *supra* note 8 and accompanying text (illustrating federal disenfranchisement of Puerto Rico's citizens); Jones–Shafroth Act of 1917, ch. 145, §§ 26, 36, 39 Stat. 951, 958-59, 963-64 (describing nonvoting function of Resident Commissioner). While "[t]he Oversight Board may intervene in any litigation filed against the territorial government[.]" it is unclear whether the Board possesses any authority to intervene in any litigation brought by Puerto Rico against the federal government. Puerto Rico Oversight, Management, and Economic Stability Act § 212.

debt crisis.<sup>104</sup> Alternatively, the local government can simply cede to Congress's authority in an effort to receive aid and guidance through the debt crisis.<sup>105</sup> Although a tempting means to resolving the debt emergency quickly, ceding power undermines Public Law 600's promise that the people of Puerto Rico be governed by a government of their own choosing.<sup>106</sup>

The mere availability of these options to Puerto Rico's government, moreover, illuminates the monumental hoax of Public Law 600—an act of Congress intended to define the Puerto Rico–United States relationship—because it is proof that Public Law 600 did not achieve its stated intent.<sup>107</sup> If Public Law 600 has a bark loud enough to reduce the federal government's reporting responsibilities to the UN—such that Puerto Rico sheds its colonial status—it should have a bite strong enough to protect the local government's authority over a matter of local concern.<sup>108</sup> Public Law 600, evidently, does not compel such force, as evidenced by the enactment and subsequent enforcement of PROMESA, a statute that strips the local government's authority.<sup>109</sup>

As such, Public Law 600 is a useless legislative attempt to remove Puerto Rico's colonial status by altering the local government's functional relationship with the United States.<sup>110</sup> Congress's failure to actually change the United States–Puerto Rico relationship through Public Law 600, in turn, gives weight and force to the last substantive judicial consideration of the island's

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104. See *Fin. Oversight & Mgmt. Bd. for P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1679-80 (2020) (Sotomayor, J., concurring) (inferring hesitation about facilitating territorial self-governance considering Congress's authority under Territorial Clause). Puerto Rico's local government has not disputed Congress's ability to enact PROMESA under the Territorial Clause and the Supreme Court "has never squarely addressed" matters related to the validity of PROMESA, "except perhaps to acknowledge that Congress' authority under the Territori[al] Clause may 'continue until granted away.'" *Id.* at 1679 (quoting *Nat'l Bank v. Cnty. of Yankton*, 101 U.S. 129, 133 (1880)).

105. See *Puerto Rico Oversight, Management, and Economic Stability Act* § 2 (providing PROMESA's effective date); *id.* § 101 (describing Board's authority). Ceding to Congress's authority to govern the debt crisis through PROMESA requires Puerto Rico's local government to do nothing, as PROMESA went into effect immediately after it was enacted. See *Puerto Rico Oversight, Management, and Economic Stability Act* § 2.

106. See *Puerto Rico Oversight, Management, and Economic Stability Act* § 101(a) (stating purpose of Board); *supra* note 56 and accompanying text (relaying Public Law 600's promise). The Board's stated purpose is to "provide a method for [Puerto Rico] to achieve fiscal responsibility." See *Puerto Rico Oversight, Management, and Economic Stability Act* § 101(a); see also *Aurelius*, 140 S. Ct. at 1674 (Sotomayor, J., concurring) (inferring local nature of Puerto Rico's debt).

107. See *supra* note 70 and accompanying text (illustrating monumental hoax theory); see also *Puerto Rico Oversight, Management, and Economic Stability Act* § 402 (retaining Puerto Rico's self-determination rights). If Public Law 600 were not a monumental hoax and indeed did achieve its stated intent of providing self-governance, it remains unclear why PROMESA includes a provision respecting "Puerto Rico's right to determine its future political status." See *Puerto Rico Oversight, Management, and Economic Stability Act* § 402.

108. See *Monge*, *supra* note 44, at 10-11 (detailing UN General Assembly's post-Public Law 600 actions); *Torruella*, *supra* note 11, at 85 (arguing pretext to Public Law 600); *Aurelius*, 140 S. Ct. at 1683 (Sotomayor, J., concurring) (noting local nature of Puerto Rico's finances).

109. See *supra* note 91 and accompanying text (illustrating PROMESA's stripping effect).

110. See *Torruella*, *supra* note 11, at 88-89 (linking Public Law 600's monumental hoax to its effect on PROMESA).

constitutional status in *Balzac*.<sup>111</sup> Because *Balzac* reaffirmed the incorporation doctrine from the *Insular Cases*, Puerto Rico remains an unincorporated territory instead of the Commonwealth that Congress ostensibly intended—but failed—to create through Public Law 600.<sup>112</sup> Without attaining the level of self-governance necessary to truly be a commonwealth, Puerto Rico functionally exists today as a colony of the United States.<sup>113</sup>

### *B. Upholding the United States' International Commitment*

An unincorporated territory functioning as a modern colonial possession is unsatisfactory by the international community's standards.<sup>114</sup> It was Public Law 600's enactment that persuaded the UN to release the United States from its reporting obligations, which Puerto Rico's colonial status necessitated.<sup>115</sup> Given that PROMESA renders Public Law 600 a monumental hoax, the United States has not met its obligation to the UN because the federal government still has not allowed its colony to attain full self-governance.<sup>116</sup>

The United States is in breach of its commitments to the international community, which reflect the United States' own anticolonial founding values.<sup>117</sup> In joining the UN, the United States bound itself to the aspirations of the UN Charter.<sup>118</sup> The United States' deprivation of Puerto Rican self-governance perpetuates Puerto Rico's colonial status and is outright inconsistent with the UN Charter that purports to promulgate equal rights and self-determination.<sup>119</sup> It is this inconsistency that constitutes both a "breach" of the United States' commitment to the UN to operate as a nation with respect for self-determination

111. See *Balzac v. Porto Rico*, 258 U.S. 298, 307-08 (1922) (noting Supreme Court's stance on Puerto Rico's territorial status). While the Supreme Court has implicitly considered the territorial status of Puerto Rico, *Balzac* remains the last case where the Supreme Court gave a substantive, forthright ruling on Puerto Rico's constitutional and political relationship with the United States. See *id.* at 308 (holding Puerto Ricans had right to expect protection despite anomalous status).

112. See *supra* note 28 and accompanying text (discussing Supreme Court upholding Territorial Doctrine).

113. See Torruella, *supra* note 36, at 80 n.102 (asserting Puerto Rico's persisting colony status).

114. See U.N. Charter, art. 73(e) (articulating UN's position on colonies).

115. See G.A. Res. 748 (VIII), at 25-26 (Nov. 27, 1953) (detailing grounds for releasing United States from colony-reporting requirements).

116. See Torruella, *supra* note 11, at 85 (detailing monumental hoax); see also *supra* note 41 (describing reporting requirements for countries with colonial possessions).

117. See *supra* note 40 and accompanying text (discussing UN's intentions and purposes); *supra* notes 2-4 (describing United States' founding-era principle).

118. See U.S. CONST. art. VI, § 2 (asserting supremacy of international agreements); U.N. Charter art. 2, § 2 (stating member nations' duties). Indeed, the UN requires all its member nations to "fulfill in good faith the obligations assumed by them in accordance with the present Charter." See U.N. Charter art. 2, § 2.

119. See *supra* note 40 and accompanying text (discussing UN's intentions and purposes); Puerto Rico Oversight, Management, and Economic Stability Act § 104, 48 U.S.C. § 2124 (preventing Puerto Rico's elected officials from governing debt crisis).

and an abject failure to live up to the country's founding principle.<sup>120</sup> Further, the U.S. Constitution mandates the federal government's recognition of the supremacy of international treaties, including the UN Charter.<sup>121</sup> The United States' "breach" of its promise to respect self-determination, partnered with the supremacy of the UN Charter, induces a modest starting point for the United States to rectify Puerto Rico's colonial status: prioritization.<sup>122</sup>

#### IV. CONCLUSION

By prioritizing Puerto Rican self-governance and self-determination, the United States would work toward accomplishing a worthy goal: rectifying the abject failure to meet its anticolonial founding. The United States' maintenance of territories like Puerto Rico, unincorporated by judicial interpretation but functionally colonial, is a peculiar hypocrisy that can only be truly rectified by stripping the federal government of its ability to possess territories at all. Because this end game is largely unattainable, prioritizing Puerto Rican self-determination would be a positive step toward the United States being the country its founders fought for. It was obvious to the founders then that self-determination is a fundamental and just cause. It is obvious to the international community now that self-determination is a necessary prerequisite to fairness and freedom. It should be obvious to the federal government and current leadership that it is finally time to respect self-determination for Puerto Rico.

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120. See *supra* note 40 and accompanying text (describing purpose of UN); *supra* notes 2-4 (reciting American founders' commitment to government-by-consent principle); Torruella, *supra* note 36, at 81 (inferring lack of self-governance based on colonial relationship).

121. See U.S. CONST. art. VI, § 2; Lawson & Sloane, *supra* note 41, at 1125-26.

122. See Torruella, *supra* note 11, at 98-99 (noting ease of potential solution). While the United States should prioritize international commitments, "[i]t is obvious that Congress will not correct the constitutional and moral injustices created by the democratic deficit that exists in the U.S.-Puerto Rico relationship." See *id.* at 98. It is, therefore, in the hands of the American people to persuade Congress of the importance of prioritizing Puerto Rico. See *supra* note 11 and accompanying text (discussing grassroots movement advocating for Puerto Rican self-determination).