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Puerto Rico Post-Hurricane Maria: Reconstruction and the Pathway to Self-Determination

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PUERTO RICO POST–HURRICANE MARIA: RECONSTRUCTION AND THE PATHWAY TO SELF-DETERMINATION

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INTRODUCTION

In the summer of 2017, the United States was hit with one of the worst hurricane seasons in its history. Three immense systems made landfall, causing severe destruction and loss of life.¹ While the efforts to rebuild in Texas and Florida have been mostly successful, the impact of Hurricane Maria on Puerto Rico has lingered for more than two years now.² With the territory's electric grid taking ages to get back online, and with thousands still needing clean water,³ the situation there has largely been forgotten amidst the furor of today's media. Congress's response has also been quite limited, though the President called the recovery efforts an "unsung success."⁴

Such cognitive dissonance between the perception and actuality of the circumstances in Puerto Rico displays the ignorance most

1. Angela Fritz, *Hurricanes Harvey, Irma, Maria and Nate Were So Destructive, Their Names Have Been Retired*, WASH. POST (Apr. 12, 2018, 10:36 AM), <https://www.washingtonpost.com/news/capital-weather-gang/wp/2018/04/12/hurricanes-harvey-irma-maria-and-nate-were-so-destructive-their-names-have-been-retired> [https://perma.cc/W7CE-P3P8].

2. See FEMA, TWO YEARS LATER, HURRICANE HARVEY RECOVERY PICKS UP STEAM (2019); FEMA, TWO YEARS OF PROGRESS AFTER HURRICANE IRMA (2019); Dánica Coto, *Puerto Rico Faces Slow Recovery 2 Years After Maria*, ASSOCIATED PRESS (Sept. 20, 2019), <https://apnews.com/966a0ad2b5094233a99551843025111f> [https://perma.cc/M2VV-XRXG].

3. See Coto, *supra* note 2; Emma Schwartz, *Quick Facts: Hurricane Maria's Effect on Puerto Rico*, MERCY CORPS (Jan. 22, 2020), <https://www.mercycorps.org/articles/united-states/hurricane-maria-puerto-rico> [https://perma.cc/BSQ2-EALM].

4. Washington Post, *Trump Calls Puerto Rico Response 'An Incredible Unsung Success'*, YOUTUBE (Sept. 11, 2018), <https://www.youtube.com/watch?v=dIWG9Yz97E8> [https://perma.cc/6NYX-CN53].

Americans have with regard to the island's status as a territory and the disenfranchisement of its people, themselves American citizens. The President's statements exacerbate Puerto Rico's invisible nature, and "the perception gap of the problem widens."⁵ Through "congressional indifference" and inaction, there does not seem to be a viable path for Puerto Rico to gain some sense of autonomy and free association.⁶ Due to the unclear nature of the relationship between the United States and Puerto Rico, it becomes necessary to involve the international community in order to restore equality and essential rights.

Now, more than two years after the fact, bureaucracy and corruption have further hindered any reconstruction efforts.⁷ Puerto Ricans are left in limbo, fending for themselves with limited resources in an effort to bring normalcy back to the island. Reconstruction is barely moving, with government red tape and corruption derailing efforts and keeping funds away from community rebuilding projects.⁸

This Note serves to critique the current treatment of Puerto Rico and its people, and how Hurricane Maria has enhanced the troubles to a breaking point. First, we will discuss the aftermath of Puerto Rico, and the state of disrepair that remains more than a year after the disaster. Then, we look at the symptoms and prior factors that contributed to and exacerbated the crisis, mainly the inability to authorize economic and infrastructure reform that stems from Puerto Rico's designation as a non-self-governing territory. With the information that millions are fleeing Puerto Rico as a result, the focus then shifts towards the inaction of the international community.

The solution presented here is to reclassify Puerto Rico under the doctrine of the United Nations, and to treat the island as a quasi-failed state. From this, the international community can take more unilateral action to provide aid to Puerto Rico, and help transition it to a fully self-governing body, either as an independent nation or a state in the United States. Failure to do so would result in catastrophic consequences for the Puerto Rican people and for the nation as a whole.

5. José Javier Colón Morera, *Puerto Rico: A Case of American Imperial Doubts?*, 85 REV. JUR. U. P.R. 883, 887 (2016).

6. *Id.* at 885.

7. Arelis R. Hernández, *Puerto Ricans Still Waiting on Disaster Funds As Hurricane Maria's Aftermath, Earthquakes Continue to Affect Life on the Island*, WASH. POST (Jan. 19, 2020, 9:40 AM), https://www.washingtonpost.com/national/puerto-ricans-still-waiting-on-disaster-funds-as-hurricane-marias-aftermath-earthquakes-continue-to-affect-life-on-the-island/2020/01/19/3864fcea-387f-11ea-bb7b-265f4554af6d_story.html [https://perma.cc/A4R3-SCNJ].

8. *Id.*

I. THE AFTERMATH

On September 20, 2017, Hurricane Maria made landfall on Vieques, Puerto Rico as a strong Category 4 hurricane, with maximum sustained winds at 155 mph.⁹ The last time Puerto Rico had experienced such a strong hurricane was in 1928, and then again in 1932, so the amount of damage Hurricane Maria caused was completely unexpected.¹⁰ The island's communications structure was entirely wiped out, with eighty-five percent of the cell towers being nonfunctional in the immediate aftermath.¹¹

Over a year later, the wreckage left after Hurricane Maria still impacts daily life in Puerto Rico. The immediate effect from the hurricane is apparent, but it is the long-term ramifications that really underline the lasting damage such a disaster unleashes upon a community. The delayed federal response underscores an unconscious prejudice that will be discussed later in this Note: that Puerto Ricans are not real American citizens.¹²

In the Federal Emergency Management Agency's (FEMA) 2017 Hurricane Season After-Action Report, an entire section of its analysis was limited to the "exceptional circumstances" in Puerto Rico.¹³ Long-term infrastructure outages were severe and widespread on the island, contrasting the isolated incidents of outages after the mainland hurricanes.¹⁴

Establishing proper chain of communication was the most difficult. FEMA was unable to adapt to the quickly deteriorating conditions fast enough to trigger an efficient response. "FEMA struggled to overcome its reliance on commercial cellular and broadband communications to execute program delivery and conduct command and control activities. For example, limited cellular service impacted the ability of disaster survivors to register for FEMA assistance."¹⁵

9. *Major Hurricane Maria—September 20, 2017*, NAT'L WEATHER SERV., <https://www.weather.gov/sju/maria2017> [<https://perma.cc/M63B-8PD5>] (last visited Mar. 22, 2020).

10. The last Category 4 hurricane to hit the island was Hurricane San Felipe II. See *Hurricane Maria Slams Into Puerto Rico With Life-Threatening Winds Up to 155 Miles Per Hour*, TIME (Sept. 20, 2017), <https://time.com/4949393/hurricane-maria-category-4-puerto-rico-landfall> [<https://perma.cc/YTZ4-CYM2>].

11. Robinson Meyer, *What's Happening With the Relief Effort in Puerto Rico?*, THE ATLANTIC (Oct. 4, 2017), <https://www.theatlantic.com/science/archive/2017/10/what-happened-in-puerto-rico-a-timeline-of-hurricane-maria/541956> [<https://perma.cc/3Z2Q-MJWZ>].

12. See *infra* Part II. See generally Hawa K. Allan, *Paradoxes of Sovereignty and Citizenship: Humanitarian Intervention at Home*, 20 CUNY L. REV. 389, 391 (2017) ("How does one reconcile the swift federal response to a 'third world country' abroad relative to the 'third world country' at home?").

13. FEMA, 2017 HURRICANE SEASON FEMA AFTER-ACTION REPORT 33 (2018) [hereinafter FEMA REPORT].

14. *Id.*

15. *Id.* at 35.

Its contingency communication options, through satellite, were not properly configured and exceeded the pre-staged supply.¹⁶ Again, “[p]rocurement and logistics challenges” delayed the delivery of more devices, further limiting the extent to which FEMA could act.¹⁷

Logistical concerns and unpreparedness are similar excuses that follows most disastrous events. Organizations specifically targeted to this situation, like FEMA, should have trained personnel and flexibility to adapt to these situations. Of course, this season was an anomaly in terms of the large magnitude of each hurricane.¹⁸ However, this does not preclude them from liability in this situation. As this Note mentions later, the limited aid FEMA provided may result from the fact that Puerto Rico is ignored in the greater American landscape; its status as a territory implies a lesser priority than disasters in actual states.¹⁹

A telling discrepancy between the response to Maria and the response to the mainland hurricanes was the time taken to implement adequate food and shelter operations. FEMA created the Sheltering and Temporary Essential Power (STEP) policy to support displaced victims.²⁰ Due to the lack of reconstruction resources, close to 500 people remained in shelters for over three months—but that was after a four-month delay in establishing shelter sites.²¹ The fact that the STEP policy was created five years prior, during Hurricane Sandy, yet still had significant setbacks is indicative of the lack of preparation in Puerto Rico.²² This is a territory much more susceptible to natural disasters but is again forgotten. “State and local governments implement STEP and therefore determine the program’s administrative structure, which necessitates customization and can impact implementation timelines,” but FEMA had yet to formulate “standard national policies or training for the program.”²³ This argument is explained further later in this Note, where Puerto Rico’s inability to enact its own legislation affects the timeliness of any assistance or recovery efforts.

FEMA looks at the logistical and organizational repercussions from the hurricane, but fails to take the humanity into account. A parallel project, created through a collaboration between Quartz, the Associated Press, and Puerto Rico’s Center for Investigative Journalism,

16. *Id.*

17. *Id.*

18. Fritz, *supra* note 1.

19. *See infra* Part I.

20. FEMA REPORT, *supra* note 13, at 42.

21. *Id.* at 40, 43.

22. *See id.* at 42.

23. *Id.*

seeks to amplify the voices of the victims of the hurricane.²⁴ Their report identified close to five hundred victims that passed in the aftermath of Hurricane Maria, calling it a consequence of “government inaction.”²⁵ The project keeps count of all deaths and notable events post-hurricane.²⁶ It serves to highlight the discrepancy between the official record and the actual number of deaths reported in the weeks directly after landfall.²⁷

The White House continues to deny any report that inflates the official death record. “[D]espite the widespread belief that the hurricane only affected older people and those with preexisting conditions,” the death rate of young people surpassed the elderly death rate.²⁸ President Trump denounced any estimate as a left-wing conspiracy to make his administration look bad, but the data is clear.²⁹ “[B]etween Sept. 6, 2017, and the day Trump left the island, there were 640 more deaths than the average during the same period in the last three previous years.”³⁰ A jump like this can only be explained by the extenuating circumstances of the Hurricane, and its impact on the already crumbling infrastructure of the island. Much like other international conflicts, “[c]ertain groups of persons tend to be particularly vulnerable . . . such as children, the elderly and the disabled.”³¹

There needs to be greater consideration for the “inter-locking human-driven systems” that exacerbate such large-scale natural events.³² “[W]hat makes [natural hazards] a disaster is how they intersect with individual and community vulnerability, which is socially constructed.”³³ The lack of access to vital utilities, like electricity,

24. Youyou Zhou, *The Story*, HURRICANE MARIA'S DEAD, <https://hurricanemariasdead.com/index.html> [<https://perma.cc/HJV2-W4Q6>] (last visited Mar. 22, 2020).

25. *Id.*

26. *See generally id.*

27. On October 3, two weeks after the hurricane hit, the official record had certified only sixteen deaths, while the project identified 168 deaths. By August 28th, the Puerto Rican government estimated that 2,975 people died as a result of Maria. The official record remained at sixty-four deaths, which had not changed since the previous December. *Id.*

28. *Id.*

29. *Id.*

30. President Trump was on the island for four hours on October 3. Zhou, *supra* note 24.

31. Sandesh Sivakumaran, *Techniques in International Law-Making: Extrapolation, Analogy, Form and the Emergence of an International Law of Disaster Relief*, 28 EUR. J. INT'L L. 1097, 1116 (2017).

32. David M. Perry, *How Neglect and Indifference Killed Puerto Ricans After Hurricane Maria*, PACIFIC STANDARD (Sept. 28, 2018), <https://psmag.com/social-justice/neglect-and-indifference-killed-puerto-ricans-after-hurricane-maria> [<https://perma.cc/8WSR-AYC3>].

33. David M. Perry, *‘There Are No Natural Disasters’: A Conversation with Jacob Remes*, PACIFIC STANDARD (Oct. 4, 2017), <https://psmag.com/economics/there-are-no-natural-disasters> [<https://perma.cc/5U8R-UU7C>].

medical care, and communications directly led to over three hundred deaths, according to the report;³⁴ these casualties were completely avoidable. Of course, it is almost impossible to find a concrete count of the casualties in the aftermath. Studies can only estimate based on mortality rates and trends, “comparing the estimated post-hurricane death rate to the mortality rate for the year before.”³⁵

FEMA blames its mismanagement on a lack of foresight regarding the possibility of successive catastrophic hurricanes, but analysis of the responses shows a different story.³⁶ Simply, the federal government was faster in providing aid to victims in Texas after Hurricane Harvey than to Puerto Ricans after Hurricane Maria.³⁷ Though the damage in Puerto Rico far exceeded that in Houston after the hurricanes, the response in Texas was more efficient and successful.³⁸ More telling was the President’s public response to both situations.³⁹ President Trump traveled to Houston at least twice during rebuilding efforts, but only made one highly publicized stop in Puerto Rico, where he was criticized for his apparent lack of compassion for people’s struggles there.⁴⁰ He marveled at the response after Harvey, while bemoaning the lack of a “community effort” in the aftermath of Maria.⁴¹ Meanwhile, there were 10,000 federal workers on the island, compared to 30,000 on the ground in Houston.⁴² The lack of attention given to Hurricane Maria is indicative of Puerto

34. See Zhou, *supra* note 24.

35. Arelis R. Hernández & Laurie McGinley, *Harvard Study Estimates Thousands Died in Puerto Rico Because of Hurricane Maria*, WASH. POST (May 29, 2018), https://www.washingtonpost.com/national/harvard-study-estimates-thousands-died-in-puerto-rico-due-to-hurricane-maria/2018/05/29/1a82503a-6070-11e8-a4a4-c070ef53f315_story.html?noredirect=on&utm_term=.42f940308044 [<https://perma.cc/PKV8-RGGG>].

36. See FEMA REPORT, *supra* note 13, at ii.

37. Danny Vinik, *How Trump Favored Texas Over Puerto Rico*, POLITICO (Mar. 27, 2018), <https://www.politico.com/story/2018/03/27/donald-trump-fema-hurricane-maria-response-480557> [<https://perma.cc/G2ZU-DXZW>].

38. No two hurricanes are alike, and Harvey and Maria were vastly different storms that struck areas with vastly different financial, geographic and political situations.

But a comparison of government statistics relating to the two recovery efforts strongly supports the views of disaster-recovery experts that FEMA and the Trump administration exerted a faster, and initially greater, effort in Texas, even though the damage in Puerto Rico exceeded that in Houston.

Id.

39. *Id.* (“If you look at his public messaging on a comparable timeline around Puerto Rico, there’s virtually nothing . . . That sends a signal to the whole federal bureaucracy about how they should prioritize.”)

40. *Id.* (“He made one visit. That type of executive attention drives the bureaucracy. While there might be people working behind the scenes, not having that constant attention and trips to region does have an impact on the level of effort.”).

41. *Id.*

42. *Id.*

Rico's diminished political voice.⁴³ With only one non-voting member in Congress, the territory does not have the resources to bat for itself on the national stage.⁴⁴

In total, \$91 billion has been earmarked for recovery efforts in Puerto Rico.⁴⁵ \$48 billion comes from emergency relief funds, while Congress has appropriated the other \$43 billion.⁴⁶ However, only an estimated \$14 billion has actually made its way to the island, with the rest tied up in bureaucratic battles between the Puerto Rican government and the Department of Housing and Urban Development (HUD).⁴⁷ Negotiations about the estimates of various development projects have been delayed,⁴⁸ which are key in approving the disbursement of the recovery funds. This new procedure is “[d]esigned to promote more efficient project delivery, [as] it allows local governments to keep any surplus below the estimate and use it on another site. But if the project comes in above budget, the government is solely responsible for covering the overrun.”⁴⁹

Because Puerto Rico has suffered through a financial crisis however, its government does not have any funds to supplement any over-budget projects.⁵⁰ As such, HUD has *purposely* missed deadlines to release funds to Puerto Rico, citing the believed incompetency of the territory's housing department to effectively manage the funds.⁵¹ The current administration has continued to bring up

43. See Vinik, *supra* note 37 (comparing the political response to the hurricanes, where multiple Senators and Governors demanded greater resources for its citizens after Harvey, showing a lack of Congressional attention to Puerto Rican victims).

44. *See id.*

45. Sharyl Attkisson, *Where Did the \$91 Billion for Hurricane Recovery in Puerto Rico Go?*, REAL CLEAR POL. (Oct. 7, 2019), https://www.realclearpolitics.com/video/2019/10/07/sharyl_attkisson_where_did_the_91_billion_for_hurricane_recovery_in_puerto_rico_go.html [https://perma.cc/8M6B-4AGM].

46. *Id.*

47. *See id.*; Jan Wesner Childs, *HUD Officials Say They Purposely Withheld Puerto Rico Hurricane Maria Recovery Money*, WEATHER CHANNEL (Oct. 19, 2019, 10:24 AM), <https://weather.com/news/news/2019-10-19-puerto-rico-maria-hud-funding-withheld> [https://perma.cc/S29Q-FM7N].

48. See Mark Walker & Zolan Kanno-Youngs, *FEMA's Hurricane Aid to Puerto Rico and the Virgin Islands Has Stalled*, N.Y. TIMES (Nov. 27, 2019), <https://www.nytimes.com/2019/11/27/us/politics-fema-hurricane-aid-puerto-rico-virgin-islands.html> [https://perma.cc/3WKA-Y6Q5].

49. Ledyard King, *2 Years After Hurricanes, Trump Administration Has OK'd Only 9 Projects for Funding in Puerto Rico*, USA TODAY (Jul. 23, 2019), <https://www.usatoday.com/story/news/politics/2019/07/18/trump-tweets-puerto-ricos-irma-maria-hurricane-recovery-trickles/1758820001> [https://perma.cc/LK9H-6PNQ].

50. Nicole Acevedo, *HUD Officials Knowingly Failed 'to Comply With the Law,' Stalled Puerto Rico Hurricane Relief Funds*, NBC NEWS (Oct. 18, 2019), https://www.nbcnews.com/news/latino/hud-20%officials-knowingly-failed-comply-law-stalled-puerto-rico-20%hurricane-n1068761?cid=sm_npd_nn_tw_ma [https://perma.cc/5D9A-U5WE].

51. *See id.*

talking points of “‘alleged corruption’ and ‘fiscal irregularities’ as well as ‘Puerto Rico’s capacity to manage these funds.’”⁵²

It is argued that this blatant disregard of a Congressional mandate is justified by the political unrest in the territory, but HUD officials have, however, testified that they had “no statutory authority” to arbitrarily withhold the funds.⁵³ Now, it seems that HUD will continue to delay releasing the funds until a financial oversight monitor is appointed.⁵⁴ There is not yet word on when, or if, that will occur.

Politics should be exclusive of human suffering. Two years down the road from a major disaster, most Puerto Ricans are still being treated as second-class citizens. With this hyper-political climate, the perception of victory matters more than actual results and responsibility.

II. LIFE, LIBERTY, AND THE FIGHT FOR AUTONOMY

The situation in Puerto Rico is untenable. With this extreme confluence of events, Puerto Rico is on the brink of collapse. There does not seem to be any significant recourse on its way either. Hurricane Maria decimated the island’s infrastructure, its immense debt is crushing the citizens, and Congress’s unwillingness to cooperate further has led to a mass exodus.⁵⁵ People are emigrating from Puerto Rico in droves, resulting in a “forced exile,” with no real prospect of returning to a stable life.⁵⁶

Congress’s callous treatment of Puerto Rico and its hesitance to grant any solid pathway towards autonomy and full citizenship is the foundation for this crisis—a crumbling foundation. “The United States cannot continue its state of denial by failing to accept that its relationship with its citizens who reside in Puerto Rico is an egregious violation of their civil rights.”⁵⁷ Most noticeably is the deprivation of life, liberty, and property granted under the Constitution.⁵⁸ Juan Torruella, Judge for the First Circuit Court of Appeals, defines the United States’ relationship with Puerto Rico an “experiment[.]”

52. *Id.*

53. *Id.*

54. *See id.*; *see also* Childs, *supra* note 47.

55. *See Developments in the Law—The U.S. Territories*, 130 HARV. L. REV. 1616, 1656 (2017) [hereinafter *Developments in the Law*]; John D. Sutter, *130,000 Left Puerto Rico After Hurricane Maria, Census Bureau Says*, CNN (Dec. 19, 2018), <https://www.cnn.com/2018/12/19/health/sutter-puerto-rico-census-update/index.html> [<https://perma.cc/D9LA-9UDN>].

56. *Developments in the Law*, *supra* note 55, at 1656.

57. Juan R. Torruella, *U.S. Territories Commentary Series: 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, 68 (2018).

58. U.S. CONST. amend. XIV, § 1.

that has continued the inherent inequality of citizens residing on the island.⁵⁹

Congress granted Puerto Ricans full citizenship, with some important caveats.⁶⁰ They cannot vote in presidential elections and have no voting representation in Congress.⁶¹ The Territory Clause of the Constitution grants Congress wide discretion to dictate the affairs of Puerto Rico as it sees fit.⁶² This seems to directly contradict legislation that designates Puerto Rico as a “State of the Union and subject to the provisions. . . of the Constitution of the United States.”⁶³

This status limbo has existed since the Court first decided on Puerto Rican autonomy, after its acquisition, in 1901.⁶⁴ When Spain first handed the territory of Puerto Rico to the United States, there was no clear language on political status, simply that its fate “shall be determined by the [sic] Congress.”⁶⁵ As noted, Congress continued to waffle and shift Puerto Rican status to fit the whims of U.S. domestic and foreign policy.⁶⁶ Justice White noted as much in an Insular Case:

The result of what has been said is that whilst in an international sense Porto Rico was not a foreign country, since it was subject to the sovereignty of and was owned by the United States,

59. Torruella, *supra* note 57, at 66–67, 69.

60. See 48 U.S.C. § 737 (1917).

61. Lani E. Medina, *An Unsatisfactory Case of Self-Determination: Resolving Puerto Rico’s Political Status*, 33 FORDHAM INT’L L. J. 1048, 1050 (2010).

62. U.S. CONST. art. IV, § 3.

63. 48 U.S.C. § 737.

64. The Court decided six cases regarding the legal structures of Puerto Rico and its relationship with the United States and reported the judgments simultaneously; this series of decisions became known as the Insular Cases. See *De Lima v. Bidwell*, 182 U.S. 1, 1–3 (1901); *Goetze v. United States*, 182 U.S. 221, 221–22 (1901); *Dooley v. United States*, 182 U.S. 222, 222 (1901); *Armstrong v. United States*, 182 U.S. 243, 243–44 (1901); *Downes v. Bidwell*, 182 U.S. 244, 244–45 (1901); *Huus v. New York and Porto Rico Steamship Company*, 182 U.S. 392, 392, 396 (1901). *Downes v. Bidwell* was the case most scrutinized by succeeding courts, but importantly, it does not have a plurality opinion. See Jesús G. Román, Comment, *Does International Law Govern Puerto Rico’s November 1993 Plebiscite?*, 8 LA RAZA L.J. 98, 103 n.39 (1995).

65. Treaty of Peace (Treaty of Paris), Spain-U.S., art. IX, Dec. 10, 1898, 30 Stat. 1754, 1759; see 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) (“The nonincorporation doctrine gives Congress constitutional flexibility when governing non-contiguous territories, and leaves the duration of territorial status indefinitely subject to the autocratic plenary powers of Congress.”); Román, *supra* note 64, at 103.

66. See, e.g., Rafael A. Declet, *The Mandate Under International Law for a Self-Executing Plebiscite on Puerto Rico’s Political Status, and the Right of U.S.-Resident Puerto Ricans to Participate*, 28 SYRACUSE J. INT’L L. & COM. 19, 40–41 (2001) (calling for a new plebiscite to include Puerto Ricans living outside of the island but still in U.S. territory); Román, *supra* note 64, at 98, 101 (examining the reasoning behind the failed legislation to approve Puerto Rico’s 1993 plebiscite that reiterated its citizens’ call for greater autonomy).

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.⁶⁷

Hedging political status on the needs of the mainland (and Hawaii) ignores the needs of U.S. citizens simply because they do not live in an actual state. Some scholars believe that the civil rights of an individual citizen and nation-state are separate legal categories, and Puerto Rico does not fit into either.⁶⁸ Instead, it can be “categorically included or excluded from the structures and institutions of the nation-state, depending upon the will of the political majority.”⁶⁹ Such a relationship was acceptable over a century ago, but the clear standards of the international community, coupled with the strong push for decolonization after World War II, make clear that the continued allowance of Congressional flexibility is akin to imperialism.⁷⁰

Recently, the Supreme Court decided upon an aspect of Puerto Rican sovereignty under the Double Jeopardy Clause in *Puerto Rico v. Sanchez Valle*.⁷¹ In this case, the defendant was already convicted under a federal arms–trafficking law, he sought to dismiss separate claims brought under Puerto Rican law.⁷² He argued that Puerto Rico is not separately sovereign from the United States under the Double Jeopardy Clause, which bars prosecuting one person for the same conduct under equivalent laws.⁷³ Puerto Rico argued that as a territory, its sovereignty created an exception to double jeopardy under the dual-sovereignty doctrine.⁷⁴ The Court rejected this view, holding that Puerto Rico’s prosecutorial authority ultimately derived from the Constitution and Congress, and thus the offenses were not distinct to allow for separate federal and territorial prosecutions.⁷⁵

67. *Downes v. Bidwell*, 182 U.S. 244, 341–42 (1901).

68. See Rebecca Tsosie, *The Politics of Inclusion: Indigenous Peoples and U.S. Citizenship*, 63 UCLA L. REV. 1692, 1750 (2016); Medina, *supra* note 61, at 1061–63.

69. Tsosie, *supra* note 68, at 1750.

70. See Colón, *supra* note 65, at 589 (comparing the relationship between the U.S. and Puerto Rico to that of British colonies, such as Canada, Australia, and India) (citing Memorandum from Felix Frankfurter, Law Officer, Dep’t. of War, to Henry Stimson, Sec’y. of War (Mar. 11, 1914)).

71. 136 S. Ct. 1863, 1867–68 (2016).

72. *Id.* at 1869.

73. *Id.* at 1867, 1869.

74. *Id.* at 1867, 1869–70. Dual-sovereignty carves an exception for criminal conduct against two separate sovereigns, treating them as two distinct offenses. See Adam J. Adler, Note, *Dual Sovereignty, Due Process, and Duplicative Punishment: A New Solution to an Old Problem*, 124 YALE L.J. 448, 450 (2014) (citing *Heath v. Alabama*, 474 U.S. 82, 88 (1985)); see also U.S. CONST. amend. V.

75. *Sanchez Valle*, 136 S. Ct. at 1870, 1875–77.

The Court's deliberation analogized the original authority of States and Native American tribes, which had established law before entering into the Union.⁷⁶ Thus, they can be considered separate sovereigns. Meanwhile, Puerto Rico was initially a Spanish colony, under Spanish sovereignty, before transferring to the U.S.⁷⁷ While Puerto Rico eventually created its own constitution and changed its status to an unincorporated Commonwealth, the document's power still branched from Congressional authority and approval:

Congress conferred the authority to create the Puerto Rico Constitution, which in turn confers the authority to bring criminal charges. That makes Congress the original source of power for Puerto Rico's prosecutors—as it is for the Federal Government's. The island's Constitution, significant though it is, does not break the chain.⁷⁸

This purely historical analysis completely bypasses the circumstances in which Puerto Rico initially became a Spanish colony, ignoring the possibility of a sovereign society before Spanish oppression and the fact that it and the Federal Government do not share the same source of power.⁷⁹ Without this parallel sovereignty prior to incorporation, “there is no getting away from the past.”⁸⁰ The Court pays no heed to how Puerto Rico functions, reasoning that “if our double jeopardy decisions hinged on measuring an entity's self-governance, the emergence of the Commonwealth would have resulted as well in the capacity to bring the kind of successive prosecutions attempted here.”⁸¹

This Note argues that such an anachronistic view of territorial independence ignores any progress Puerto Rico has made towards full sovereignty in the interim.⁸² As Justice Breyer notes in his dissent, Congress has an essential role in the creation of new states or sovereigns, and thus the “source” of power eventually leads back to the Constitution.⁸³ Puerto Rico obviously has a unique cultural tradition and history—it was not a land devoid of order before the United States *saved* it.⁸⁴

76. *Id.* at 1871–72.

77. *Id.* at 1868.

78. *Id.* at 1875–76.

79. *Id.* at 1878–80 (Breyer, J., dissenting).

80. *Id.* at 1876.

81. *Sanchez Valle*, 136 S. Ct. at 1874.

82. *See id.* at 1880 (“[A]s with the Philippines, new States, and the Indian tribes—congressional activity and other historic circumstances can combine to establish a *new* source of power.”).

83. *Id.* at 1879.

84. *Id.* at 1884.

Breyer uses the example of the Philippines, previously an American territory, as one where its independence and sovereignty are absolute, even though the original source of that power comes from Congressional action.⁸⁵ Like the Philippines, Puerto Rico has always operated as a distinct entity, and should enjoy the same considerations of self-government as such.⁸⁶ Of course, the Court attempts to narrow its decision strictly to the double jeopardy issue, but it seems easy to extend this rationale to all criminal proceedings in the territory.⁸⁷ As Colón notes:

These extrapolations delegitimize the people of Puerto Rico as the creative source behind the Constitution of the Commonwealth of Puerto Rico, and maintain that the island, in its internal affairs, is still a territory subject to the plenary powers of Congress, merely because the U.S. Supreme Court identifies Congress as the ultimate source of power for purposes of double jeopardy.⁸⁸

In the end, this is just another case of judicial confusion, where the federal government intrudes upon Puerto Rico's affairs only when convenient.⁸⁹ This haphazard governing continues to propagate Puerto Rico's already jumbled political status.⁹⁰

While Puerto Rico suffers, it is up to the mainland population to resolve the conflict and bring focus to the civil rights deprivation going on. Yet many Americans do not even realize that Puerto Ricans are American citizens, which creates a larger gap of understanding between these groups.⁹¹ An inherent bias is formed. Since they are not *real* Americans, they do not need to receive the same kind of treatment that we mainland Americans have. The reluctance to admit a "poor Spanish-speaking Latino state" relates to the perceived un-American nature of having a state that does not primarily converse in English.⁹² That furthers the depiction of Puerto Rico as a Caribbean tourist destination, and not as an integral part of the American community and culture.

85. *Id.* at 1878.

86. *See id.* at 1878, 1884.

87. Colón, *supra* note 65, at 599.

88. *Id.*

89. *Sanchez Valle*, 136 S. Ct. at 1883 ("Finally, as to the Legislative Branch, to my knowledge since 1950 Congress has never—I repeat, *never*—vetoed or modified a local criminal law enacted in Puerto Rico.") (Breyer, J., dissenting).

90. *Id.* at 1882–83; *see* Colón, *supra* note 65, at 598–99.

91. Kyle Dropp & Brendan Nyhan, *Nearly Half of Americans Don't Know Puerto Ricans Are Fellow Citizens*, N.Y. TIMES (Sept. 26, 2017), <https://www.nytimes.com/2017/09/26/upshot/nearly-half-of-americans-don't-know-people-in-puerto-ricans-are-fellow-citizens.html> [<https://perma.cc/S2M9-UUJZ>].

92. Morera, *supra* note 5, at 885.

In fact, a reason why the response has not been as robust as expected is that “[m]any Americans don’t realize that what happened in Puerto Rico is a domestic disaster, not a foreign one.”⁹³ This inaccurate belief can have disastrous consequences, especially with the growth of nationalist ideology in recent years. Americans are less likely to support foreign aid, but that would change if people actually knew that Puerto Rico was part of the country.⁹⁴ Public sympathy is a powerful force, and studies consistently show that people are more likely to contribute to members of their own group.⁹⁵ “Why geographic location should make any difference or have any relevance to a determination of such a fundamental question as the rights to which a citizen is entitled defies *any logic or valid legal principle*” and contradicts the Constitution’s intent.⁹⁶

All of this supports the proposition that Puerto Ricans are discriminated against and deprived of basic due process rights. By not properly educating the public about Puerto Rico and its situation, the government is better equipped to sweep Puerto Ricans’ plight under the rug. In a callous and fleeting global conscience, it becomes easy to move focus from a group of people that many would not realize are citizens and towards the new national crisis without addressing the previous one.

When Puerto Ricans themselves try to take charge of their own destiny, even that has little influence on the legislature. Indeed, Puerto Ricans have trended more towards the idea of statehood than independence or the status quo.⁹⁷ In 2011, a report by the President’s Task Force on Puerto Rico’s Status determined that Congress should follow the will of the Puerto Rican people.⁹⁸ “The policy of the Federal executive branch has long been that Puerto Rico’s status should be decided by the people of Puerto Rico.”⁹⁹ Mid-2017, the island held a plebiscite ballot to determine how its people wanted to gain true freedom.¹⁰⁰ The results were overwhelmingly in favor of statehood,

93. Dropp & Nyhan, *supra* note 91; *see also* Allan, *supra* note 12, at 421 (“Furthermore, while it is unequivocal that the United States government has a responsibility to protect its citizens, which would be presumably uncontroversial to fulfill, the responsibility to do the same for noncitizens abroad is, by comparison, not only of dubious certainty, but its assumption is often politically unpopular.”).

94. Dropp & Nyhan, *supra* note 91.

95. *Id.*

96. Torruella, *supra* note 57, at 97 (emphasis added).

97. *Id.* at 96.

98. Joseph Blocher & Mitu Gulati, *Puerto Rico and the Right of Accession*, 43 *YALE J. INT’L L.* 229, 231 (2018).

99. *Id.* (quoting REPORT BY THE PRESIDENT’S TASK FORCE ON PUERTO RICO’S STATUS 18 (2011), https://obamawhitehouse.archives.gov/sites/default/files/uploads/Puerto_Rico_Task_Force_Report.pdf).

100. *See* R. SAM GARRETT, CONG. RESEARCH SERV., R44721, POLITICAL STATUS OF PUERTO RICO: BRIEF BACKGROUND AND RECENT DEVELOPMENTS FOR CONGRESS 10–12

though only 23% of the population voted.¹⁰¹ Still, such a lopsided declaration for change is met with little action.

In today's hyper-partisan political climate, such an act may signal a death knell to the Republican party. If President Obama's recommendation, and the Task Force's idea of following the people, were followed, Puerto Rico could significantly shift the balance of power in both houses of Congress.¹⁰² Given its current state, its citizens have reason to lean very liberal, with a strong focus on social issues and the global economy.¹⁰³ Congress is apprehensive about a possible culture clash as a consequence of statehood. With the current administration's vocal anti-immigration and anti-Latino rhetoric, Puerto Rico faces more barriers to entry into the union.

Puerto Rico, with its own established culture, language, and traditions, must ask itself how willing it is to integrate with the United States.¹⁰⁴ "[F]ederal lawmakers might resist simply because the local population, which exceeds that of twenty-one states, would entitle the island to a relatively large representation and to substantial power in mainland politics."¹⁰⁵ Congress is then more likely to pass the buck for as long as possible if they believe that Puerto Ricans hold the key to political domination by the opposing party. Instead, there needs to be a more proactive approach to explore functional and equitable solutions, statehood or otherwise.¹⁰⁶

To overcome the politicization of international disaster relief, there needs to be a defined relationship between the United States and Puerto Rico that is compatible with international practice. The degree of control and public support in aid efforts is determinative when allowing outside relief. Since countries look to the United States as a global leader, it may be that political hubris prevents the government from accepting international help—American exceptionalism must reign supreme.¹⁰⁷ Based on the barbs traded between

(2017) (explaining that "plebiscite" refers to "a popular vote as an expression of non-binding preference").

101. *Id.* at 15 (showing that 97.2% of ballots were in favor of statehood, 1.5% for independence/free association, and 1.3% for the current territorial status).

102. *See generally id.*

103. Blocher & Gulati, *supra* note 98, at 231–32.

104. *See* Ángel R. Oquendó, *At Rock Bottom: Puerto Rico's Crises and Self-Determination*, 41 N.Y.U. REV. L. & SOC. CHANGE (HARBINGER) 253, 261 (2017).

105. *Id.* at 260 n.31; *see also* U.S. CENSUS BUREAU, ANNUAL ESTIMATES OF THE RESIDENT POPULATION FOR THE UNITED STATES, REGIONS, STATES, AND PUERTO RICO: APRIL 1, 2010 TO JULY 1, 2018 (last visited Mar. 22, 2020) (containing relevant state population data).

106. *See* Oquendó, *supra* note 104, at 263.

107. *But see* Sandesh Sivakumaran, *Arbitrary Withholding of Consent to Humanitarian Assistance in Situations of Disaster*, 64 INT'L & COMP. L.Q. 501, 502 (2015) ("Even the wealthiest of States might have difficulties meeting the needs of affected persons; the response of the United States to hurricane Katrina being a case in point.").

President Trump and the Puerto Rican government, it seems obvious that “[a]id refusal, much like aid provision, is at its core a political act.”¹⁰⁸

III. FALTERING ECONOMICS AND THE FEAR OF DEBT

The main drawback of fully incorporating Puerto Rico into the union is the looming burden of its large debt.¹⁰⁹ However, it is easy to argue that the symptoms of Puerto Rico’s economic failures rest solely with the United States’ own economic trends. Around the same time the Insular Cases were decided, Congress also passed the Jones Act, “which significantly raises the cost of imported goods to the island by limiting foreign ships from going to Puerto Rico.”¹¹⁰ The idea was to encourage more American-built vessels and crews to make shipments to the island, but it severely limited any ability Puerto Rico had to negotiate with multinational corporations and industries.¹¹¹ Puerto Rico was given a roadblock to entry into the global market, and its economy never quite adjusted to the status quo.¹¹² The economic concerns of a hundred years ago linger today.

The 2008 recession incapacitated Puerto Rico’s economy, to the point where the only real option was to look towards high interest municipal bonds so as to avoid bankruptcy.¹¹³ “[N]o state-level economic crises since the Great Depression has reached a point at which rescue aid was critical to the state’s very survival as a going concern.”¹¹⁴ Coming from the financial crisis of the last decade, Puerto Rico was indeed on a “financial precipice.”¹¹⁵

108. Travis Nelson, *Rejecting the Gift Horse: International Politics of Disaster Aid Refusal*, 10 CONFLICT, SECURITY & DEV. 379, 395 (2010).

109. Holly Yan, *From a Debt Crisis to Hurricane Maria to a Massive Texting Scandal: Why Puerto Rico is in Chaos*, CNN (July 24, 2019), <https://www.cnn.com/2019/07/18/us/puerto-rico-crises-q-and-a-trnd/index.html> [<https://perma.cc/2VX9-34B6>].

110. Nicole Acevedo, *Does Congress Hold Power Over Puerto Rico Through Racist, Outdated Rulings? Lawmakers Say Yes*, NBC NEWS (Oct. 31, 2019, 1:23 PM), <https://www.nbcnews.com/news/latino/does-congress-hold-power-over-puerto-rico-through-racist-outdated-n1071056> [<https://perma.cc/A8GJ-JXLK>].

111. *See id.*; Niraj Chokshi, *Would Repealing the Jones Act Help Puerto Rico?*, N.Y. TIMES (Oct. 24, 2017), <https://www.nytimes.com/2017/10/24/us/jones-act-puerto-rico.html> [<https://perma.cc/276J-ZV5Y>].

112. *See* BRYAN RILEY, TRADE AND PROSPERITY IN THE STATES: THE CASE OF ALABAMA (2017).

113. *See* Cheryl D. Block, *Federal Policy for Financially-Distressed Subnational Governments: The U.S. States and Puerto Rico*, 53 WASH. U. J.L. & POL’Y 215, 219–20 (2017); Mitu Gulati & Robert K. Rasmussen, *Puerto Rico and the Netherworld of Sovereign Debt Restructuring*, 91 S. CAL. L. REV. 133, 135 (2017).

114. Block, *supra* note 113, at 217.

115. *Id.*

Puerto Rican economics have always been catered to enhance the mainland U.S. economy. The U.S. created a dependent economy on the island, beholden to U.S. policies in order to develop its own infrastructure.¹¹⁶ “[I]n the modern age of neocolonialism, states have used less formal, but nonetheless invasive, mechanisms to gain influence over target nations’ cultural, economic, and legal affairs.”¹¹⁷ Thus, Puerto Rico’s current instability can be traced back to these foundational decisions that hindered independent development. The island never learned how to become self-sufficient because it was never given the circumstances to succeed on its own. Further attempts at tax reform imitated history, where the government used its “coercive power, rather than democratic deliberation” to enhance its economic interests.¹¹⁸

Hurricane Maria only exacerbated the issue, making it exponentially more difficult to recover. In its aftermath, citizens are emigrating in droves, and many businesses have not reopened due to irreparable damage to their stores.¹¹⁹ To combat this, “Congress could enact disaster relief sufficient to allow Puerto Rico to rebuild its economy.”¹²⁰ That carrot came with a large stick, when Congress “provided a glimmer of hope to the American citizens of Puerto Rico” with implementation of PROMESA—the Puerto Rico Oversight, Management, and Economic Stability Act.¹²¹

Puerto Rico gained two options that it lacked prior to the legislation’s passage. But the price for these protections was steep. A control board was put in place that effectively took over control of the territory’s finances and the conduct of any insolvency proceedings. The members of this board were appointed by elected officials in Washington. The elected government of Puerto Rico had no right to appoint or veto any members. Given potential constitutional infirmities with the control board, it remains to be seen whether this last-minute action is sufficient to save the island from total financial collapse.¹²²

116. Diane Lourdes Dick, *U.S. Tax Imperialism in Puerto Rico*, 65 AM. U.L. REV. 1, 13 (2015) (describing the concept of tax imperialism).

117. *Id.* at 12.

118. *Id.* at 51.

119. See Matthew Goldstein, *Puerto Rico’s Positive Business Slogans Can’t Keep the Lights On*, N.Y. TIMES (Mar. 5, 2018), <https://www.nytimes.com/2018/03/05/business/puerto-rico-business-maria.html> [<https://perma.cc/LF5K-P5AS>]; Sutter, *supra* note 55.

120. Gulati & Rasmussen, *supra* note 113, at 138 n.23.

121. *Id.* at 134. See generally Puerto Rico Oversight, Management, and Economic Stability Act, Pub. L. No. 114-187, 130 Stat. 549 (2016) [hereinafter PROMESA].

122. Gulati & Rasmussen, *supra* note 113, at 134.

Through this act, Puerto Rico gained a lifeline, but lost even more of its autonomy. Under PROMESA, Congress established a Financial Oversight and Management Board (FOMB), which carried fundamental economic decision-making power.¹²³ “Even though the law allows the FOMB, Congress, and the Governor to coordinate with an eye to consensus in the enactment of the fiscal plan, the FOMB has final authority to establish the fiscal plan and local budgets.”¹²⁴ PROMESA unequivocally seizes power from the Puerto Rican government, holding it financially hostage until the FOMB decides to allow the territory to re-enter capital markets.¹²⁵

The effects of PROMESA are yet to bear fruit, but the toll of the hurricane has led to a disastrous 8% drop in real GDP.¹²⁶ That makes Puerto Rico the slowest growing economy in the world, far below the troubled nations that might immediately come to American’s minds.¹²⁷ The United States does have legitimate public policy concerns regarding Puerto Rico’s failing economy, as blowback could affect larger national markets.¹²⁸ However, the argument is that PROMESA actually shows a Congressional intent “to intervene more extensively in Puerto Rico’s internal matters.”¹²⁹ As this Note shows, the United States has a more unilateral relationship with Puerto Rico, seemingly involving itself only in matters that have greater national implications.¹³⁰ PROMESA does not allow for more collaborative processes, halting the territorial government from making important financial decisions.¹³¹

Without any initiative to ensure refugees and other citizens return to the island, these people have no incentive to ever return. Reports indicate that Puerto Rico has lost 5% of its population in emigration, with an estimated 250,000 more to leave by 2020.¹³² In

123. Colón, *supra* note 65, at 614.

124. *Id.*

125. *Id.* at 598–99 (quoting PROMESA § 101) (“On June 30, 2016, using the territorial power to address a serious fiscal crisis in Puerto Rico, Congress established a Financial Oversight and Management Board (FOMB) ‘to provide a method for [Puerto Rico] to achieve fiscal responsibility and access to the capital markets.’”).

126. Ana Campoy, *Puerto Rico is Set to Become the World’s Worst Economy Next Year*, QUARTZ (Nov. 23, 2017), <https://qz.com/1137351/hurricane-marias-impact-on-puerto-ri-cos-economy-and-jobs> [<https://perma.cc/J9RK-LLD9>].

127. *Id.*

128. See James Spiotto, *Puerto Rico’s Financial Woes Are Hurting US Infrastructure*, CNN (Aug. 29, 2019), <https://www.cnn.com/2019/08/29/perspectives/puerto-rico-municipal-bonds/index.html> [<https://perma.cc/2DPG-56WH>].

129. Colón, *supra* note 65, at 615.

130. See *id.* at 589, 593, 612–15.

131. *Id.* at 614.

132. Lizette Alvarez, *Despair and Anger as Puerto Ricans Cope With Debt Crisis*, N.Y. TIMES (July 3, 2015), <https://www.nytimes.com/2015/07/04/us/despair-and-anger-as-puerto>

effect, they are gaining rights by remaining in a fully integrated state, where their votes matter and their voices may actually be heard.¹³³

Unfortunately, the current political turmoil in Puerto Rico does little to further its arguments for more autonomy. In July 2019, Governor Ricardo Rossello announced his resignation following two concurrent scandals.¹³⁴ In one, two former aides resigned after they were caught involved in a fraudulent scheme involving federal funds.¹³⁵ The other scandal pertained to the publication of a trove of secret messages passed between members of his administration.¹³⁶ The messages crudely “mocked [Rosello’s] political foes and allies alike,” and also seemed to implicate the Governor in misappropriating some of the reconstruction funds.¹³⁷ The texts belittled members of his own party, other Puerto Rican activists, and even made light of the “dead bodies accumulating during and after the hurricane at the understaffed morgue.”¹³⁸ The Puerto Rican Bar Association released a report suggesting that “seven potential crimes had been revealed in the chat, including an implied threat against the mayor of San Juan, . . . possible instances of diversion of funds, conspiracy, disclosure of private information and intention to terminate employment based on political beliefs.”¹³⁹

News outlets did point out that some of the vitriol was directed towards the financial oversight board, which has curtailed the territorial government’s ability to grant funding.¹⁴⁰ But the rhetoric and callousness of the comments left little accountability on the part of Rosello himself. Weeks of grassroots protest clamored for his resignation, as the natives saw this as the culmination of years of ineptitude.¹⁴¹ The anger over this scandal “united Puerto Ricans of all stripes,” marking a surprising turn of events and signaling hope for

-ricans-cope-with-debt-crisis.html [https://perma.cc/DU8D-XWJ3] (“Over the past decade, Puerto Rico has lost more than 5 percent of its population, which now numbers 3.6 million . . . An additional 250,000 people are expected to leave by 2020 . . .”).

133. See Oquendó, *supra* note 104, at 262 (describing Puerto Ricans as “voting with their feet”).

134. Patricia Mazzei & Frances Robles, *Ricardo Rosselló, Puerto Rico’s Governor, Resigns After Protests*, N.Y. TIMES (July 24, 2019), <https://www.nytimes.com/2019/07/24/us/rossello-puerto-rico-governor-resigns.html> [https://perma.cc/8X24-XJC6].

135. *Id.* See also King, *supra* note 49.

136. Mazzei & Robles, *supra* note 134.

137. See *id.*; Patricia Mazzei, *Puerto Rico Leadership in Turmoil Amid Calls for Ricardo Rosselló to Resign*, N.Y. TIMES (July 14, 2019), <https://www.nytimes.com/2019/07/14/us/puerto-rico-rossello.html> [https://perma.cc/DG4P-RYFG].

138. Mazzei, *supra* note 137; see also Mazzei & Robles, *supra* note 134 (“Don’t we have some cadavers to feed our crows?”).

139. Mazzei & Robles, *supra* note 134.

140. Mazzei, *supra* note 137.

141. Mazzei & Robles, *supra* note 134.

a more united approach to governing the island.¹⁴² However, this has also diminished Congress's faith in the territory, making it "less likely to disburse important federal aid"¹⁴³

With Puerto Rico's murky status, it does not have the agency to create its own remedy and is at the mercy of the whims of Congress. A recent case before the Supreme Court sought to resolve the issue of debt redressability, which highlighted how boxed in the Puerto Rican people are.¹⁴⁴ *Puerto Rico v. Franklin Cal. Tax-Free Trust* held that Puerto Rico did not have the ability to enact its own municipal bankruptcy scheme to restructure its insolvent public utilities companies.¹⁴⁵ Under the Bankruptcy Code, Puerto Rico is still a State for many of its provisions, but is excluded from a significant subsection regarding the definition of "who may be a debtor."¹⁴⁶ Thus, it cannot then authorize its "municipalities to seek relief under Chapter 9 before the municipalities may file a Chapter 9 petition," leaving the utility companies at the behest of lenders.¹⁴⁷

In the dissent, Justice Sotomayor, who is Nuyorican, vehemently denounced the decision, saying it crippled Puerto Rico's autonomy.¹⁴⁸ The Bankruptcy Code preempted Puerto Rico's Recovery Act, leaving no state avenue of recovery.¹⁴⁹ "[A] nonfederal bankruptcy solution is not merely a parallel option; it is the *only existing legal option* for Puerto Rico to restructure debts that could cripple its citizens."¹⁵⁰ Torruella calls this language "double speak . . . to the effect that although Puerto Rico belongs to the United States, it was 'foreign in a domestic sense.'"¹⁵¹ When convenient to the nation, Puerto Rico shifts from an oppressed territory to a celebrated 'state' and people.

Justice Sotomayor was also concerned by the lack of compassion for Puerto Rico and its citizens, where a private debtor can take the island hostage, and the ransom is total repayment.

These concerns are starkly presented in the context of municipal entities like public utilities. While a business corporation can use bankruptcy to reorganize, and, if that fails, fold up shop and

142. *Id.*

143. *Id.*

144. *See* *Puerto Rico v. Franklin Cal. Tax-Free Trust*, 136 S. Ct. 1938, 1942 (2016).

145. *Id.* at 1942, 1949.

146. *Id.* at 1942.

147. *Id.* at 1944.

148. *Id.* at 1949. Justice Sotomayor also joined the dissent in *Puerto Rico v. Sanchez Valle*. *See* *Puerto Rico v. Sanchez Valle*, 136 S. Ct. 1863, 1877 (2016).

149. *Franklin Cal. Tax-Free Trust*, 136 S. Ct. at 1950.

150. *Id.* at 1949 (emphasis added).

151. Torruella, *supra* note 57, at 89 (quoting *Downes v. Bidwell*, 182 U.S. 244, 341–42 (1901)).

liquidate all of its assets, governments cannot shut down power plants, water, hospitals, sewers, and trains and leave citizens to fend for themselves. A “fresh start” can help not only the unfortunate individual debtor but also—and perhaps especially—the unfortunate municipality and its people.¹⁵²

Once the hurricane landed, FEMA experienced first hand the structural deficiencies in Puerto Rico’s electrical grid. “Power is the backbone of America’s economic sectors, generating the energy that empowers its people and businesses. The lifelines of communications, health and medical, food and water, wastewater, and transportation all represent critical downstream dependencies of power.”¹⁵³ In its report, FEMA called for a coordinated local, federal, and private sector effort into investing in reliable, resilient, and secure infrastructure.¹⁵⁴

What is interesting is the call for private funding, which is in a similar vein to the solution of international aid. The reason private investment in Puerto Rico is lacking is again due to the lack of viable business opportunity on the island.¹⁵⁵ Furthermore, private businesses are not usually so altruistic as to provide aid without furthering their own interests.

President Trump’s Tax Cuts and Jobs Act also serves to limit investment opportunities for private corporations.¹⁵⁶ “The tax reform imposes a new 12.5% tax on income generated from intellectual property held by foreign corporations”—but corporations in Puerto Rico are now defined as “foreign corporations, even when such a corporation is affiliated with a mainland company”¹⁵⁷ The economic consequences are still unknown, but they do not make Puerto Rico look like an enticing venture at a time when the island is desperate for new business.

IV. PUERTO RICO IN THE INTERNATIONAL COMMUNITY

During the period of decolonization in the 1950s, the international community was deliberating how to properly serve the needs of these fledgling states without aggravating their former colonial

152. *Franklin Cal. Tax-Free Trust*, 136 S. Ct. at 1950.

153. FEMA REPORT, *supra* note 13, at 37.

154. *Id.* at iii.

155. Richard Levick, *Private Sector Must Step Up to Spur Puerto Rico’s Recovery and Growth*, FORBES (Sept. 16, 2019, 9:48 AM), <https://www.forbes.com/sites/richardlevick/2019/09/16/private-sector-must-step-up-to-spur-puerto-ricos-recovery-and-growth/#1d2dcf9267dd> [<https://perma.cc/7SU3-9FJC>].

156. Torruella, *supra* note 57, at 96–97.

157. *Id.* at 97.

overlords.¹⁵⁸ The most important factor was to determine if the state was on a path to full independence, or if there was a continuing association with its former colonial power.¹⁵⁹ It was here that the United Nations failed Puerto Rico, when it declassified the island as a Non-Self-Governing Territory.¹⁶⁰ In 1961, the U.N. created the Committee on Decolonization with the express purpose of providing all people the “right to self-determination.”¹⁶¹

Here is where Puerto Rico’s fate was sealed, and what the last sixty years have been trying to correct. In November 1953, the U.S. Representative to the U.N. General Assembly said: “I am authorized to say on behalf of the President that, if at any time the Legislative Assembly of Puerto Rico adopts a resolution in favor of more complete or even absolute independence, he will immediately thereafter recommend to Congress that such independence be granted.”¹⁶² However, the sentiment of this statement does not match up with the actions Ambassador Lodge took to ensure that the U.S. could put up a believable façade of decolonization.¹⁶³ By indicating that PR was capable of full self-government, the perception of it as a dependent colony was lessened. The declassification was met with great skepticism, and the vote emphasized the uncertainty of the international body.¹⁶⁴

Recently, the United Nations Special Committee on Decolonization convened to reconsider Puerto Rico’s status, and to possibly reinstitute it as a Non-Self-Governing Territory.¹⁶⁵ More than fifty petitioners, from Puerto Rican advocacy groups to international allies, have called on the committee to fulfill its mission and find an equitable solution to provide Puerto Ricans with the ability of self-determination.¹⁶⁶ The U.N. has passed thirty-seven resolutions calling

158. *Developments in the Law*, *supra* note 55, at 1658.

159. *Id.*

160. *Id.* at 1664.

161. G.A. Res. 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples, ¶ 2 (Dec. 14, 1960); G.A. Res. 1654 (XVI), The Situation With Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (Nov. 27, 1961).

162. PUBLIC SERVICES DIVISION, U.S. DEP’T OF STATE, BULLETIN NO. 755, U.S. RELATIONSHIP WITH PUERTO RICO: STATEMENT BY HENRY CABOT LODGE, JR. U.S. REPRESENTATIVE TO THE GENERAL ASSEMBLY 841 (1953).

163. See H.R. Rep. No. 110-597, at 7 (2008).

164. The vote was hotly debated, with 20 votes for, 16 against, and 18 abstentions. See *id.*; *Developments in the Law*, *supra* note 55, at 1664; *General Assembly—Quick Links: Resolutions Adopted by the General Assembly at its 8th Session*, UNITED NATIONS, <https://research.un.org/en/docs/ga/quick/regular/8> [<https://perma.cc/9RHA-8GNA>] (last visited Mar. 22, 2020); see also G.A. Res. 748 (VIII) (Nov. 27, 1953).

165. Press Release, Speakers Voice Concern about Environmental, Fiscal Challenges of Puerto Rico as Special Decolonization Committee Approves Annual Self-determination Text, U.N. Press Release GA/COL/3337 (June 24, 2019), available at <https://www.un.org/press/en/2019/gacol3337.doc.htm> [<https://perma.cc/F9JP-53BA>].

166. *Id.*

for the self-determination of Puerto Rico since its declassification in 1953, yet this seems to be the limit of its influence over the territory's political process.¹⁶⁷

A. Can Puerto Rico Accept International Aid Independently?

1. International Natural Disaster Response Law

Due to the encroaching nature of international aid missions, there is a lack of cohesion in international disaster relief law (IDRL). “[A]ll previous efforts at formulating general, universal, binding rules have failed.”¹⁶⁸ The main apprehension preventing any such agreement from taking place is that the international relief committee would usurp the sovereign's power.¹⁶⁹ In 1984, a proposed UN convention on expediting international relief delivery failed to garner adequate support, and the UN Economic and Social Council never took action upon it.¹⁷⁰ Any clash between state sovereignty and international overreach led to a stalemate.¹⁷¹ The success of any future multilateral convention will depend on whether the Council can balance these two positions and appeal to the greater human rights need at hand.¹⁷²

More recent attempts at establishing universal standards of disaster relief have come from more decentralized efforts. The International Federation of Red Cross and Red Crescent Societies (IFRC)¹⁷³ first created its IDRL program in 2001.¹⁷⁴ In its Desk Study regarding the state of the law, the IFRC noted the patched nature that developed through treaties and other soft-law agreements that, while not

167. See *UN Decolonization Plans Report on Puerto Rico*, PUERTO RICO REPORT (June 22, 2019), <https://www.puertoricoreport.com/un-decolonization-plans-report-on-puerto-rico/#.Xc8IpJNKjOQ> [<https://perma.cc/2F32-FFKE>].

168. J. Benton Heath, Note, *Disasters, Relief, and Neglect: The Duty to Accept Humanitarian Assistance and the Work of the International Law Commission*, 43 N.Y.U. J. INT'L L. & POL. 419, 444 (2011).

169. *Id.* at 444 n.92.

170. *Id.* (stating “[d]espite the fact that this convention provided useful measures to speed the delivery of aid and equipment, it was opposed by some states who thought it went too far beyond existing agreements . . . On the other side, the Red Cross organizations argued that the convention over-emphasized sovereignty and the control of the affected State”).

171. *Id.*

172. *Id.*

173. For a more in-depth analysis of the IFRC's operations and place within international law, see Kristen Dale, Note, *The Red Cross and Red Crescent Movement: Power Players in International and Domestic Natural Disaster Law*, 25 CARDOZO J. INT'L & COMP. L. 111, 113–15 (2016).

174. DAVID FISHER, LAW AND LEGAL ISSUES IN INTERNATIONAL DISASTER RESPONSE: A DESK STUDY 19 (2007).

binding, “nevertheless exercise varying levels of moral authority as evidence of international consensus and/or best practice.”¹⁷⁵ Further collaboration between IFRC and the UN has also had no real binding standard of relief law, only just a general encouragement to adopt and operationalize the IFRC’s IDRL guidelines.¹⁷⁶

There is an accepted practice of aiding other sovereigns in the wake of large-scale natural disasters.¹⁷⁷ However, this has not turned into any international custom or legally binding duty. Much of the problems with providing aid stem from the State’s fear that the international community will infringe upon sovereignty.¹⁷⁸ The fear of showing political weakness or incompetence is a powerful force opposing any international intervention. Previous debate surrounding this issue centered on the Responsibility to Protect (R2P) doctrine, first expounded in 2001 and endorsed by all UN member states at the 2005 World Summit.¹⁷⁹ This was an important step towards better international cooperation, but the doctrine conspicuously failed to include one major aspect of international aid in its text: response to natural disasters.¹⁸⁰

175. *Id.* at 33.

176. *IDRL Guidelines*, INT’L FED’N OF RED CROSS & RED CRESCENT SOC’YS, <http://www.ifrc.org/en/what-we-do/idrl/idrl-guidelines> [<https://perma.cc/YS7B-ZYST>] (last visited Mar. 22, 2020) (“[S]tate parties to the Geneva Conventions and the International Red Cross Red Crescent Movement unanimously adopted the ‘Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance’ (also known as the ‘IDRL Guidelines’) at the 30th International Conference of the Movement.”); *see also* G.A. Res. 69/243, at 8 (Dec. 23, 2014) (“[The General Assembly] [w]elcomes the growing number of initiatives undertaken at the regional and national levels to promote the implementation of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance [IDRL Guidelines], encourages Member States and, where applicable, regional organizations to take further steps to review and strengthen operational and legal frameworks for international disaster relief, taking into account the Guidelines, as appropriate, and welcomes the valuable support that national Red Cross and Red Crescent societies are providing to their Governments in this area . . .”).

177. Tyra Ruth Saechao, Note, *Natural Disasters and the Responsibility to Protect: From Chaos to Clarity*, 32 BROOK. J. INT’L L. 663, 665 (2007).

178. *See id.* at 685.

179. G.A. Res. 60/1, 2005 World Summit Outcome, art. 1 (Sept. 16, 2005) [hereinafter 2005 World Summit Outcome]; ICISS, THE RESPONSIBILITY TO PROTECT: REPORT OF THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY VIII (2001), http://www.globalr2p.org/media/files/iciss_report.pdf [hereinafter THE RESPONSIBILITY TO PROTECT]; *see, e.g.*, Matias Thomsen, *The Obligation Not to Arbitrarily Refuse International Disaster Relief: A Question of Sovereignty*, 16 MELBOURNE J. INT’L L. 1, 3 (2015) (citing Myanmar’s refusal of international aid in the aftermath of Cyclone Nargis in 2008 as a backdrop for advancing a concrete form of international humanitarian relief law); Jarrod Wong, *Reconstructing the Responsibility to Protect in the Wake of Cyclones and Separatism*, 84 TUL. L. REV. 219, 219 (2009); Jessica Lucia Frattaroli, Note, *A State’s Duty to Prepare, Warn, and Mitigate Natural Disaster Damages*, 37 B.C. INT’L & COMP. L. REV. 173, 187 (2014).

180. *See* Wong, *supra* note 179, at 219.

Responsibility to Protect holds that “where sovereign governments are manifestly failing to discharge their primary responsibility to protect their populations from ‘genocide, war crimes, ethnic cleansing and crimes against humanity,’ that responsibility shifts to the wider international community acting through the United Nations.”¹⁸¹ R2P encompasses three principles: the responsibility to react, responsibility to prevent, and responsibility to rebuild.¹⁸² The Commission constantly refers to the need to respect state sovereignty, and so it recognizes few cases in which international intervention is necessary and has “just cause.”¹⁸³ This Note focuses on its first set of just cause circumstances, namely in order to prevent “large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a *failed state* situation[.]”¹⁸⁴

It is evident that the main focus of R2P is to intervene in serious ongoing conflicts, but the report carves out an inclusion for “overwhelming natural or environmental catastrophes, where the state concerned is either unwilling or unable to cope, or call for assistance, and significant loss of life is occurring or threatened.”¹⁸⁵ In the broad conditions set out, “large-scale” is the term that rules whether intervention is justified.¹⁸⁶ The ICISS report does not attempt to quantify the term, and thus the debate on where to draw the line can completely takeover any other consideration when trying to justify international humanitarian relief. As mentioned earlier, the Puerto Rican government estimates the death toll at 2,975.¹⁸⁷ While significant, this number pales in comparison to the tragedies that spurred the establishment of international intervention procedures.¹⁸⁸ Focus on intervention in international and non-international armed conflicts presumes to trump any ‘lesser’ type of disaster, where arms are not involved but the casualties can still reach the same level.

181. *Id.* at 221 (quoting 2005 World Summit Outcome, *supra* note 179).

182. THE RESPONSIBILITY TO PROTECT, *supra* note 179, at XI.

183. *Id.* at 32.

184. *Id.* (emphasis omitted).

185. *Id.* at 33.

186. *Id.*

187. *Puerto Rico Increases Hurricane Maria Death Toll to 2,975*, BBC (Aug. 29, 2018), <https://www.bbc.com/news/world-us-canada-45338080> [<https://perma.cc/38JG-BS5W>].

188. The R2P report points to the conflicts in Rwanda, Bosnia, Kosovo, and Somalia as the catalysts for greater analysis on the issues of intervention. THE RESPONSIBILITY TO PROTECT, *supra* note 179, at 1 (“These four cases occurred at a time when there were heightened expectations for effective collective action following the end of the Cold War. All four of them . . . have had a profound effect on how the problem of intervention is viewed, analyzed and characterized.”).

Of course, applicability of the R2P doctrine remains unclear. It is up to the Security Council to make such decisions.¹⁸⁹ With China and Russia's aversions to outside interference, it is unlikely that any such resolution would pass, so the precedent of human rights trumping state sovereignty could not take hold.¹⁹⁰ Furthermore, when the UN endorsed the R2P doctrine, it limited its scope and did not fully codify all of the ICISS report's propositions, notably omitting any reference to natural disaster relief.¹⁹¹ Critics rely on this fact, regarding the omission as a "deliberate rejection by the United Nations of the applicability of R2P to natural disasters, asserting that its use here is accordingly improper and further will only encourage reliance on the doctrine to justify all manner of humanitarian interventions."¹⁹²

B. The United States' Obligations Under International Law

As such, the United States has no binding legal norms over its stance on international disaster relief. "More specifically still, there is no legal obligation (leaving aside the question of moral obligation) incumbent upon the United States to refrain from interfering with the provision of humanitarian relief in disaster situations."¹⁹³ In its capacity as sovereign, the United States has wide discretion over how relief fund is distribution and how aid is limited. Congress's initial allocation of \$4.9 billion covered just a fraction of the estimated damages, cited between \$45 and \$90 billion.¹⁹⁴

The United Nations has always maintained its position on the status of Puerto Rico since the initial resolution in 1953.¹⁹⁵ In its resolution, the General Assembly recognized that "the people of the Commonwealth of Puerto Rico have been invested with attributes of political sovereignty which clearly identify the status of self-government attained by the Puerto Rican people as that of an autonomous

189. *Id.* at 50.

190. See Thomsen, *supra* note 179, at 17 (noting that China and Russia immediately rejected the proposal to invoke R2P doctrine in the wake of Myanmar's abject response to the damage caused by Cyclone Nargis).

191. Wong, *supra* note 179, at 231 (quoting 2005 World Summit Outcome, *supra* note 179, ¶¶ 138–39).

192. *Id.* at 245.

193. Justin A. Fraterman, *Criminalizing Humanitarian Relief: Are U.S. Material Support for Terrorism Laws Compatible with International Humanitarian Law?*, 46 N.Y.U. J. INT'L L. & POL. 399, 450 (2014) (discussing the interference of material support law hindering efforts to provide humanitarian relief to conflict and non-conflict disaster zones).

194. See Special Comm. on the Situation with regard to the Implementation of the Declaration on the Granting of Indep. to Colonial Countries and Peoples, Special Comm. decision of 19 June 2017 concerning Puerto Rico, ¶ 45, U.N. Doc. A/AC.109/2018/L.13 (Feb. 12, 2018).

195. See G.A. Res. 748 (VIII), *supra* note 164.

political entity”¹⁹⁶ With this quasi-foreign status achieved, the U.S. government exercised control over Puerto Rican affairs with impunity and disregard for the will of the Puerto Rican people.¹⁹⁷

Federalist arguments also seem to support territorial autonomy, where a state or territory government—closer to the people—are better equipped to handle local issues than a federal government that is less active in the area.¹⁹⁸ In a federalized nation, the subunits of the central government are more “visible to outside nations in a way that the fully subordinated divisions of a unitary state are not.”¹⁹⁹ There is a larger focus on autonomy and the right of self-determination, where the state has a greater duty to its citizens than to the federal government.²⁰⁰ Simply standing by as a country continues to belittle the plight of its people only furthers oppression; that said, “states that fail to protect their own people from mass atrocities [should] lose their right to territorial integrity.”²⁰¹ This does not condone any invasion or infringement upon American sovereignty, but asks for the international community to hold the United States government more accountable to its inherent moral and political obligations.

The United Nations Special Committee on Decolonization has continued to monitor the situation in Puerto Rico, and has recently stepped up its rhetoric on the worrying conditions in the territory.²⁰² With the increased call of a change in the status quo by the Puerto Rican people in their multiple plebiscites, it is clear that Puerto Rico’s feelings on its relationship has drastically changed in the sixty years since the initial declaration. Much of the international community has called for action in accordance with Resolution 748(VIII), noting that “either of the parties to the mutually agreed association may desire any change in the terms of this association.”²⁰³

In particular, the Committee has noticed the recent legislation regarding Puerto Rico: the PROMESA bill and the case *Puerto Rico*

196. *Id.* ¶ 5.

197. See generally H.R. Rep. No. 110-597 (2008).

198. See Edward L. Rubin, *The Role of Federalism in International Law*, 40 B.C. INT’L & COMP. L. REV. 195, 208 (2017) (“The federalist character of a nation—that is, the degree to which the nation grants autonomy to its subsidiary units—might well change what constitutes an internal affair and thereby change another nation’s willingness to intervene.”).

199. *Id.*

200. *Id.*; see Joseph Blocher & Mitu Gulati, *A Market for Sovereign Control*, 66 DUKE L.J. 797, 812–13 (2017).

201. Blocher & Gulati, *supra* note 200, at 813.

202. See Special Comm. on the Situation with regard to the Implementation of the Declaration on the Granting of Indep. to Colonial Countries and Peoples, Decision of the Special Comm. of 20 June 2016 concerning Puerto Rico, ¶¶ 1, 4, 8–9, U.N. Doc. A/AC.109/2017/L.12 (June 16, 2017).

203. G.A. Res. 748 (VIII), *supra* note 164, ¶ 9.

v. Sanchez Valle.²⁰⁴ The Movement of Non-Aligned Countries stated concern at the “imposition of a financial oversight board on the Government of Puerto Rico, which would encroach upon its already limited power over its budget.”²⁰⁵ PROMESA, as noted earlier, constricts the already limited power of the Puerto Rican government and “points to an intensification of colonial control over Puerto Rico.”²⁰⁶ The establishment of the FOMB epitomized the blatant restriction of self-determination.²⁰⁷

The Board, “whose authority supersedes that of the laws adopted by the legislature of Puerto Rico” effectively removed any opportunity for self-determination from the island.²⁰⁸ The committee denounced the implementation of the FOMB as a violation of Puerto Rico’s right to self-determination, and it implored the United States to “expedite a process that would allow the people of Puerto Rico to exercise fully their right to self-determination and independence. . . . to take decisions in a sovereign manner, and to address their urgent economic and social needs, including unemployment, marginalization, insolvency and poverty.”²⁰⁹ So far, PROMESA has not shown significant progress in improving the island’s financial situation.²¹⁰ Even with its power, at the time of the Board’s report in early 2018, Puerto Rico did not have access to the municipal bonds market due to its credit rating.²¹¹

In July 2019, the Special Committee on Decolonization approved its resolution on the Puerto Rico situation, calling on the United States to promote a “process that enables Puerto Ricans to fully exercise their right to self-determination and independence, and to take decisions in a sovereign manner to address their challenges.”²¹² The committee also noted its concern that, with the implementation

204. U.N. Doc. A/AC.109/2018/L.13, *supra* note 194, ¶ 36.

205. Special Comm. on the Situation with regard to the Implementation of the Declaration on the Granting of Indep. to Colonial Countries and Peoples, Summary record of the 6th meeting, ¶ 2, U.N. Doc. A/AC.109/2017/SR.6 (July 21, 2017) (noting “[t]he political subordination of the Puerto Rican people impeded their sovereign capacity to take decisions to address their economic and social problems, including the current fiscal crisis, the insolvency of the Government and the need to restructure the public debt”).

206. U.N. Doc. A/AC.109/2018/L.13, *supra* note 194, ¶ 43.

207. *Id.* ¶ 36 (citing The Board’s mandate to “ensure that Puerto Rico has a balanced budget and has access to the capital markets for four consecutive years before its mandate would cease”).

208. *See id.*

209. Press Release, Special Comm. on Decolonization, Special Committee on Decolonization Approves Text Calling Upon United States Government to Expedite Self-Determination Process for Puerto Rico, U.N. Press Release GA/COL/3926 (June 20, 2016), *available at* <https://www.un.org/press/en/2016/gacol3296.doc.htm> [<https://perma.cc/EYQ3-MLEU>]; *see also* Colón, *supra* note 65, at 615–16.

210. *See* U.N. Doc. A/AC.109/2018/L.13, *supra* note 194, ¶¶ 52, 74–76, 83.

211. *Id.* ¶ 36.

212. *See* U.N. Press Release GA/COL/3337, *supra* note 165.

of PROMESA, “the already weakened area in which the prevailing regime of political and economic subordination in Puerto Rico operates is reduced” even further, stripping the government of any agency.²¹³ This was the same draft resolution written the year before, however, again underlining the limits of the Special Committee’s ability to instill change.²¹⁴

By calling the situation a “humanitarian crisis in America,” Puerto Rico hopes to elevate the disaster into the conversation of failed humanitarian relief.²¹⁵ San Juan Mayor Carmen Yulin Cruz described the situation more bluntly: “We are dying here. If we don’t get the food and the water into the people’s hands, we are going to see something close to a genocide.”²¹⁶

V. THE SOLUTION

With Puerto Rico’s stability in question, the international community has a duty to step up and reassess the situation. There needs to be comprehensive and open reform, requiring international cooperation and a willingness from Congress to shift the conversation on Puerto Rican sovereignty. Reconstruction needs not just better humanitarian aid, but also economic recovery dedicated to Puerto Rican interests.

The most reasonable step towards a solution is to reclassify Puerto Rico as a non-self-governing territory. That way, the UN Special Committee on Decolonization can again report on whether Puerto Rico’s autonomy is enough to not be considered a colony. Any report on Puerto Rico would have great effect in renewing the discourse surrounding the island. Among the factors considered should be that Puerto Rico “currently spends more money servicing its debt than it does funding education or health, that at least 150 public schools have closed, and that approximately 3000 doctors have emigrated, statistics that amount to a *humanitarian crisis*.”²¹⁷ As mentioned before, the law of self-determination necessitates a setting where citizens have more than partial liberty—that “peoples have

213. *Id.*

214. *See id.*; *see also* Special Comm. on the Situation with regard to the Implementation of the Declaration on the Granting of Indep. to Colonial Countries and Peoples, Decision of the Special Comm. of 18 June 2018 concerning Puerto Rico, ¶¶ 2, 8–10, U.N. Doc. A/AC.109/2019/L.7 (June 19, 2019).

215. Deirdre Walsh & Kevin Liptak, *Federal Response to Hurricane Maria Slowly Takes Shape*, CNN (Sept. 25, 2017), <https://www.cnn.com/2017/09/25/politics/puerto-rico-hurricane-maria-aid-donald-trump/index.html> [<https://perma.cc/5YKH-K7LM>].

216. Meyer, *supra* note 11.

217. *Developments in the Law*, *supra* note 55, at 1673 (emphasis added).

the right to ‘freely determine their political status and freely pursue their economic, social and cultural development.’”²¹⁸

Recently, Congress has shifted more focus to the crisis in Puerto Rico, especially after the natural disasters placed the spotlight directly on the territory.²¹⁹ A bipartisan House resolution was introduced that would reject the Insular Cases and “their use as legal precedent for current and future rulings on Puerto Rico or the other U.S. territories.”²²⁰ These cases have notoriously been linked to *Plessy v. Ferguson*,²²¹ as they were written by the same Justices. They espouse parallel decisions about diminishing the role of racial minorities in civic society. It took sixty years for *Plessy* to be overturned.²²² Congress can do even more, by repealing the Jones Act, and allowing Puerto Rico to build an independent economic pathway to wealth.

Right now, Puerto Ricans have the illusion of internal self-determination. Although they carry U.S. citizenship, their inability to vote or to participate substantively in the political process constitutes a denial of fundamental liberty.²²³ By highlighting the deficiencies of Puerto Rican citizenship compared to mainland U.S. citizenship, Puerto Rico’s government can build its case for secession or another form of greater autonomy and independence.²²⁴ In its latest resolution, the Special Committee on Decolonization called on the General Assembly to “comprehensively consider the question of Puerto Rico and decide on the issue as soon as possible.”²²⁵

Puerto Rico may seek to follow the template set out in the aftermath of Hurricane Katrina in 2005. In a similar situation, the New Orleans area was devastated by the hurricane, and the government’s obvious lack of preparation and foresight led to a colossal loss of life,

218. Glen Anderson, *Unilateral Non-Colonial Secession and Internal Self-Determination: A Right of Newly Seceded Peoples to Democracy?*, 34 ARIZ. J. INT’L & COMP. LAW 1, 4 (2017) (quoting G.A. Res. 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples, art. 2 (Dec. 14, 1960)).

219. Nicole Acevedo, *House Delegation’s Immediate Priority in Puerto Rico Doesn’t Include Statehood*, NBC NEWS (March 18, 2019), <https://www.nbcnews.com/news/latino/house-delegation-s-immediate-priority-puerto-rico-doesn-t-include-n984571> [<https://perma.cc/X52S-ZCWA>].

220. Acevedo, *supra* note 110.

221. 163 U.S. 537 (1896); *see id.*

222. Acevedo, *supra* note 110.

223. *See* Anderson, *supra* note 218, at 25; Alexia Fernández Campbell, *Puerto Rico’s Push for Statehood Explained*, VOX (Sept. 24, 2018, 3:50 PM), <https://www.vox.com/policy-and-politics/2018/1/11/15782544/puerto-rico-pushes-for-statehood-explained> [<https://perma.cc/A2LJ-W8BH>].

224. *See* Anderson, *supra* note 218, at 23, 62 (calling this form “external self-determination”).

225. U.N. Press Release GA/COL/3337, *supra* note 165.

much of which may have been preventable.²²⁶ In its report investigating the response to Hurricane Katrina, the government summarized as follows:

Hurricane Katrina necessitated a national response that [f]ederal, [s]tate, and local officials were unprepared to provide . . . The [f]ederal response suffered from significant organization and coordination problems during this week of crisis. The lack of communications and situational awareness had a debilitating effect on the [f]ederal response. Even after coordinating elements were in place, [f]ederal departments and agencies continued to have difficulty adapting their standard procedures to this catastrophic incident. The [f]ederal government's problems responding to Hurricane Katrina illustrate greater systemic weaknesses inherent in our current national preparedness system: the lack of expertise in the areas of response, recovery, and reconstruction. Insufficient planning, training, and interagency coordination are not problems that began and ended with Hurricane Katrina. The storm demonstrated the need for greater integration and synchronization of preparedness efforts, not only throughout the [f]ederal government, but also with the [s]tate and local governments and the private and non-profit sectors as well.²²⁷

Replace Katrina with Maria, and the response almost mirrors that in FEMA's After-Action Report, over twelve years later.

If such a failure in institutional preparedness can continue to exist after multiple disasters, it shows an inability to rise to the level of protection necessary to ensure the lives of its citizens. This is more than a simple indifference, but a lack of resources or the capacity to improve the "systemic weaknesses" in the current disaster relief system.²²⁸

The looming concern is the certain political backlash facing any nation or organization that tries to criticize the United States' domestic policy. Such a pragmatic and cautious view of international relations greatly ignores the people in need of assistance; "[t]he criteria for intervening . . . depends on the scope and intensity of the victims' suffering, not on the political structure of the subject nation."²²⁹ Of

226. See Casinova O. Henderson, *Hurricane Katrina Victims: A Claim in the International Courts?*, FL. A&M U. L. REV. 155, 157 (2010) ("An insufficient response to a natural disaster based on the federal government policies could be considered systematic or widespread so as to constitute a crime against humanity when there is a pattern of failures.").

227. FRANCES FRAGOS TOWNSEND, *THE FEDERAL RESPONSE TO HURRICANE KATRINA: LESSONS LEARNED* 50 (2006), available at: <http://library.stmarytx.edu/acadlib/edocs/ka-trinawh.pdf>.

228. See *id.*

229. Rubin, *supra* note 198, at 215.

course, with this disaster occurring on U.S. soil, the ability to bypass the political structure is impossible. Through diplomacy and external pressures, the international community can try to influence action on behalf of Puerto Rico.

However, in the end there must be a bilateral decision to move forward on forming a clear political relationship between the parties. “[V]indication may consist in empowering Puerto Rico to rule itself” and pursue a broader framework of autonomy.²³⁰ One of the myriads of reasons why Puerto Ricans have failed to advance any strong push for greater autonomy is the fear of losing the American safety net.²³¹

Politicians need to take a stand with Puerto Rico and fully support building a coalition towards self-determination.²³² Any grassroots support against this “indefinite disenfranchisement” must come from the greater Latin-American mainland community, who have the platform to speak for the island locals.²³³ Some call for “a larger role for Puerto Rico’s NGO sector to help break the logjam and deliver the critical recovery services that communities across the island need.”²³⁴ Instead of implementing more bureaucracy, there needs to be a way to streamline the release of already approved federal aid. Non-governmental organizations (NGOs) may have the best pathway to provide that relief, as they are usually more trusted by local communities.²³⁵ By breaking down to barrier of mistrust, there can be an efficient way to “implement the projects that have the most immediate and enduring positive impact on the quality of life of the people of Puerto Rico.”²³⁶

According to Colón, *Sanchez Valle* provides a pathway to explore “asymmetric sovereign relations” due to its view of the meaning of sovereignty.²³⁷ Congress should use “inventive statesmanship” and

230. Oquendó, *supra* note 104, at 254.

231. See Frances Robles, *23% of Puerto Ricans Vote in Referendum, 97% of Them for Statehood*, N.Y. TIMES (June 11, 2017), <https://www.nytimes.com/2017/06/11/us/puerto-ricans-vote-on-the-question-of-statehood.html> [<https://perma.cc/6X9G-77QH>].

232. *Contra* Oquendó, *supra* note 104, at 258 (stating that politicians “will typically make a generic pledge to honor the will of the local electorate and, implicitly, to avoid any alteration of the status quo” (emphasis omitted)).

233. See *Iguartua-de la Rosa v. United States*, 386 F.3d 313, 317 (1st Cir. 2004) (Torruella, J., dissenting) (“The indefinite disenfranchisement of the United States citizens residing in Puerto Rico constitutes a gross violation of their civil rights as guaranteed by the Fifth Amendment and by international treaties to which our Nation is a signatory.”); see also Oquendó, *supra* note 104, at 264.

234. Annie Mayol, *It’s Time to Speed Up Puerto Rico’s Recovery*, THE HILL (Nov. 1, 2019, 5:30 PM), <https://thehill.com/opinion/white-house/468586-its-time-to-speed-up-puerto-ricos-recovery> [<https://perma.cc/TF8A-AWHC>].

235. *Id.*

236. *Id.*

237. Colón, *supra* note 65, at 619; see *Puerto Rico v. Sanchez Valle*, 136 S. Ct. 1863, 1876 (2016) (holding that “Congress has broad latitude to develop innovative approaches to territorial governance . . . that Congress may thus enable a territory’s people to make

find a way to better balance the interests of both parties.²³⁸ In this sense, the federal government has continuously failed to evolve in accordance with the times and sentiments of its people. Contrary to the Court's opinion, the future does matter, and diplomacy should always look towards a more amicable and equitable future.²³⁹

This fear is not unsubstantiated, since congressional actions depict an aversion to the idea of Puerto Rican statehood.²⁴⁰ Puerto Rico itself is still uncertain of the best path, with neither the option of statehood nor a commonwealth gaining a majority of votes in previous plebiscites.²⁴¹ U.S. officials can then pass the buck, claiming that any inaction is a result of Puerto Rico's hesitancy. At the same time, Congress has not tried to find a way to promote either option, content with letting the political status remain in limbo.²⁴²

As noted earlier, the Democratic-leaning population likely puts off any Republican administration from touching the issue.²⁴³ Due to the prolonged inaction by any administration, Puerto Ricans may feel so politically disenfranchised that they do not trust nor support either party.²⁴⁴ Thus, an opportunity presents itself, for either side to be proactive and pursue practical pathways towards Puerto Rican self-determination.²⁴⁵ While the island may currently favor the social welfare platform of Democrats, it is actually Republicans that favor a federalist government, one where states and localities have more authority over its own affairs.²⁴⁶ If a Republican administration presented an appealing option for Puerto Rico's future, it could seize control of a huge demographic that is traditionally held by the left.²⁴⁷

large-scale choices about their own political institutions; and that Congress did exactly that in enacting Public Law 600 and approving the Puerto Rico Constitution . . .").

238. *Sanchez Valle*, 136 S. Ct. at 1876 (citing Memorandum from Felix Frankfurter, Law Officer, Dep't. of War, to Henry Stimson, Sec'y. of War (Mar. 11, 1914)).

239. *See id.* ("[T]he future is not what matters—and there is no getting away from the past.").

240. Oquendó, *supra* note 104, at 260–61.

241. *See id.* at 262.

242. Campbell, *supra* note 223.

243. "Puerto Rico statehood would require approval from Congress, where it would face a tough fight because the territory is considered to lean Democratic and it would have two senators and five representatives if it became a state. But it could be hard for Congress to block it if a strong majority of Puerto Ricans demonstrated support for joining the union." Danica Coto, *Puerto Rico Statehooders See Opportunity as Woes Deepen*, ASSOCIATED PRESS (Aug. 24, 2015), <https://apnews.com/90e40c801a6343ada9727d318411428e> [<https://perma.cc/DU4Z-SH7L>].

244. *See* Morera, *supra* note 5, at 885–87.

245. *See* Oquendó, *supra* note 104, at 269.

246. *See* Andres L. Cordova, *2020 Party Politics in Puerto Rico*, THE HILL (Feb. 3, 2019, 2:00 PM), <https://thehill.com/opinion/campaign/428264-2020-party-politics-in-puerto-rico> [<https://perma.cc/FGY3-G6SJ>].

247. *See infra* Part II.

There are reasons for both sides to stop ignoring this issue and bring about real progress.

Building the foundation for Puerto Rico to succeed as an independent nation-state depends on proper economic reforms. The collapse of Puerto Rico's economy falls on both the federal and the territorial governments.²⁴⁸ A good step towards recovery is allowing the island to impose its own constraints. Having the island legislate its own interests removes any mainland bias that Congress may unknowingly bring. There needs to be more action than just forming an oversight board. It may suggest improvements, but there is no evidence of any active policy implementation.²⁴⁹

Puerto Rico itself can do better, but it needs domestic and international support to truly begin restoring its shores. Domestically, one branch of government needs to step up and stop the continuous neglect of Puerto Ricans. A step first is for the judiciary to overrule its previous rulings that Puerto Rico, as a territory, is simply U.S. "property."²⁵⁰ Property connotes ownership over something;²⁵¹ in this case, the property in question is the lives and rights of Puerto Ricans. Without self-determination, these citizens do not have the full protections guaranteed by the Founders of this country.²⁵²

CONCLUSION

Puerto Rico has "a relationship to the United States that has no parallel in our history . . ."²⁵³ When Hurricane Maria hit Puerto Rican shores, it brought the island back to the national forefront. The Hurricane not only highlighted issues in the island's infrastructure and development, but also in the deficiencies of its relationship with the nation as a whole. It is unfortunate that human suffering brings greater focus to a situation, but now is the time for Puerto Rico to grasp onto that platform and start the call for a holistic

248. See Jodie Adams Kirshner, *We Screwed Up Detroit. Now It's Puerto Rico's Turn*, THE DAILY BEAST (Oct. 27, 2019, 5:18 AM), <https://www.thedailybeast.com/we-screwed-up-detroit-now-its-puerto-ricos-turn?ref=scroll> [<https://perma.cc/6LEC-C9NB>].

249. *But see* Courtenay Brown, *How Little We Know About Puerto Rico's Economy*, AXIOS (Aug. 28, 2019), <https://www.axios.com/data-puerto-rico-economy-hurricane-impact-0f9c5e84-696c-4451-8dda-59efe2aa7bff.html> [<https://perma.cc/5EV9-BV7M>].

250. See *Downes v. Bidwell*, 182 U.S. 244, 268 (1901).

251. *What is Property?*, BLACK'S LAW DICTIONARY, <https://thelawdictionary.org/properly> [<https://perma.cc/XL7D-XJFF>] (last visited Mar. 22, 2020).

252. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (" . . . that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness").

253. *Examining Bd. of Eng'rs, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 596 (1976).

reconstruction effort. Millions of proud Puerto Ricans have essentially fled their homes, living on the mainland as domestic refugees.²⁵⁴ These are refugees with stronger rights, however, and no reason to return to the island besides nostalgia. As a result, Puerto Rico is leaking its culture and language, losing its identity as it falls further into crisis.

The country needs to see the aftermath of Hurricane Maria as an opportunity for rebirth, and a chance to rekindle growth in a place rich of culture and people. Look no further than the rebuilding of New Orleans post–Hurricane Katrina. At almost fifteen years later, parts of the city shine, but recovery is still incomplete.²⁵⁵ Across many indicators, it is clear that New Orleans is in a better place than it was pre-Hurricane, with a better school system and robust tourism.²⁵⁶ That process took time and patience, but it also showed that the roots of the problem never truly go away. Still, some lower socioeconomic classes are as vulnerable as they were before the destruction.²⁵⁷ Puerto Rico needs to learn from this process and find a way to utilize aid to enforce long-term change and progress.

Puerto Rico has hope. Activists are coming to its aid, bringing awareness and opportunity back to the island.²⁵⁸ By keeping the focus on the island's people and culture, Puerto Rico can use the momentum to build an international platform for its needs. When the entire world is listening, the perception of growth can then become reality.

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254. John D. Sutter & Sergio Hernandez, 'Exodus' From Puerto Rico: A Visual Guide, CNN (Feb. 21, 2018), <https://www.cnn.com/2018/02/21/us/puerto-rico-migration-data-invs/index.html> [<https://perma.cc/H24L-D6ZL>].

255. Andre M. Perry, *New Orleans Is Still Learning from the Lessons of Katrina—Houston Should Too*, BROOKINGS: THE AVENUE (Aug. 29, 2017), <https://www.brookings.edu/blog/the-avenue/2017/08/29/new-orleans-is-still-learning-from-the-lessons-of-katrina-houston-should-too> [<https://perma.cc/KP4C-LCX7>].

256. *Id.*

257. *Id.*

258. For example, Lin Manuel-Miranda recently brought the hit musical *Hamilton* to Puerto Rico to bring the national conversation back onto the island. Michael Schulman, *What "Hamilton" in San Juan Means to Puerto Rico*, THE NEW YORKER (Jan. 17, 2019), <https://www.newyorker.com/culture/culture-desk/what-hamilton-in-san-juan-means-to-puerto-rico> [<http://perma.cc/W7BV-24LE>].

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