
CHAPTER TWO

THE INTERNATIONAL PLACE OF PUERTO RICO

*Puerto Rico's heart is not American. It is Puerto Rican.*¹

Puerto Rico has, for over a decade now, faced deep crisis. Sustained levels of emigration to the continental United States have resulted in millions in “forced exile,”² the territory’s debt has ballooned to \$72 billion,³ and its relationship to the United States remains unsettled. This Chapter offers an internationalist explanation of Puerto Rico’s troubled position, demonstrating through recent developments that Puerto Rico is in fact non-self-governing under international law, and explores the implications of this finding pursuant to the Charter of the United Nations and other applicable instruments.

This Chapter proceeds in three sections. Section A examines the 1953 adoption of U.N. General Assembly Resolution 748 removing Puerto Rico from the list of Non-Self-Governing Territories. It argues that the decision was ultimately mistaken — the United Nations misjudged the level of internal autonomy enjoyed by Puerto Rico — and that the gap between the label thrust upon the island and the facts on the ground has only grown, as measured by U.N. criteria.⁴ Section B uses case studies to demonstrate that Puerto Rico does not meet U.N. standards for self-governance. First, it argues that the extensive powers of the Puerto Rico Oversight, Management, and Economic Stability Act⁵ (PROMESA) Oversight Board are fundamentally incompatible with U.N. standards for self-government. Second, it explains that the federal government’s apparent power to impose capital punishment for federal crimes committed on the island is further evidence of significant interference in internal matters. Section C analyzes Puerto Rico’s potential remedies at the United Nations, as well as under other international legal instruments.

¹ Rubén Berríos Martínez, *Puerto Rico's Decolonization*, 76 FOREIGN AFF. 100, 102 (1997).

² See Leonor Ayala Polley, “Forced Exile,” *Say Puerto Ricans Leaving Island amid Financial Crisis*, NBC NEWS (May 3, 2016, 8:42 AM), <http://www.nbcnews.com/news/latino/forced-exile-say-puerto-ricans-leaving-island-amid-financial-crisis-n566781> [https://perma.cc/B85Y-RWZ4].

³ Mary Williams Walsh & Liz Moyer, *How Puerto Rico Debt Is Grappling with a Debt Crisis*, N.Y. TIMES: DEALBOOK (July 1, 2016), <http://www.nytimes.com/interactive/2016/business/dealbook/puerto-rico-debt-crisis-explained.html> [https://perma.cc/G4RD-8JB5].

⁴ This argument is similar to one made in Bruce J. Hector, Note, *Puerto Rico: Colony or Commonwealth?*, 6 N.Y.U. J. INT’L L. & POL. 115 (1973). This Chapter extends and updates the argument, incorporating recent developments to make a more forceful case for a lack of internal governance.

⁵ Pub. L. No. 114-187, 130 Stat. 549 (2016) (codified in scattered sections of 15, 29, and 48 U.S.C.).

A. A Dream Denied at the United Nations

The nineteenth century was the age of empire; the twentieth, the age of decolonization.⁶ Colonialism, a contested concept, can be characterized as “a process in which one society endeavor[s] to rule and to transform another.”⁷ Its counterpart, self-determination, has been linked to governmental legitimacy and the prevention of international conflict, and was one of the United Nations’ foundational goals; indeed, the *first* article of the U.N. Charter describes self-determination as a fundamental right, and the concept is “universalized and internationalized” in a host of other international documents.⁸ At the United Nations, the international shepherd of the decolonization project, Puerto Rico was one of the first test cases for the standards to be applied in determining whether self-governance had been achieved.⁹

Existing scholarship has already significantly contributed to historicizing events at United Nations Headquarters in 1953.¹⁰ In that year, Puerto Rico was removed from the organization’s list of Non-Self-Governing Territories, a designation that carried significant implications, both symbolic and legal, for the United States.¹¹ While this Chapter will leave descriptions of the precise legal and political machinations around the decisionmaking at the United Nations to others,¹² it merits highlighting that the United States made the case for Puerto Rico as a self-governing entity based on Public Law 600,¹³ which purported to enable the creation of a commonwealth relationship between the United States and Puerto Rico. Those representations did not, however, comply with U.N. requirements for self-governing status even in 1953. Over time, the gap between the designation — which

⁶ See Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT’L L. 46, 54 (1992) (“Remarkably, after the Second World War the principle of self-determination became the most dynamic concept in international relations.”).

⁷ Sally Engle Merry, Review Essay, *Law and Colonialism*, 25 L. & SOC’Y REV. 889, 890 (1991); see also EDWARD W. SAID, *CULTURE AND IMPERIALISM* 9 (Vintage Books 1994) (1993) (“[I]mperialism’ means the practice, the theory, and the attitudes of a dominating metropolitan center ruling a distant territory; ‘colonialism’ . . . is the implanting of settlements on distant territory.” (internal punctuation omitted)).

⁸ Franck, *supra* note 6, at 54; see *id.* at 57–58.

⁹ See Humberto García Muñiz, *Puerto Rico and the United States: The United Nations Role 1953–1975*, 53 REVISTA JURIDICA DE LA UNIVERSIDAD DE PUERTO RICO [REV. JUR. U. P.R.] 1, 23 (1984).

¹⁰ See, e.g., JOSÉ TRÍAS MONGE, *PUERTO RICO: THE TRIALS OF THE OLDEST COLONY IN THE WORLD* 121–24 (1997); Muñiz, *supra* note 9, at 19–48; Hector, *supra* note 4, at 120–23.

¹¹ See discussion *infra* section C.1.

¹² For a particularly thorough historical account, see Muñiz, *supra* note 9, at 19–48.

¹³ Act of July 3, 1950, Pub. L. No. 81-600, 64 Stat. 319.

has yielded considerable geopolitical benefits for the United States — and the reality of Puerto Rico’s legal and political status has grown.¹⁴

1. *The United Nations’ Standards for Self-Governance.* — The precise criteria for determining self-governance at the United Nations date back to the 1953 Ad Hoc Committee, which drafted a list of thirty-four factors divided into three categories, each attempting to capture a different type of sovereignty.¹⁵ The first and third sets of factors were not relevant to Puerto Rico; they dealt with territories moving toward independence and territories that had become “an integral part of” the metropolitan country but freely associated with that country on an equal basis.¹⁶ It was the second set of factors — looking at continuing associations between territories and their former colonial powers, where the territory was *not* on the path to independence or some form of incorporation — that most clearly applied to Puerto Rico.

This association inquiry focused on the unencumbered exercise of the right to self-determination, the ability to determine international status, and the ability to control internal self-governance. For example, under “[g]eneral” factors, the inquiry looked to the territory’s freedom to choose “between several possibilities, including independence”; “to modify at any time [its] status [with the metropolitan country] through the expression of [its] will by democratic means”; and to “decide upon the future destiny of the Territory with due knowledge.”¹⁷ Also relevant were geographical considerations and the degree to which “[e]thnic and cultural considerations” separated the territory from the metropolitan country.¹⁸

Moreover, under “[i]nternational status,” the inquiry considered “the power to enter freely into direct relations . . . with other governments and with international institutions and to negotiate, sign and ratify international instruments freely,” alongside “[t]he right of the metropolitan country or the Territory to change the political status of that Territory” based on claims or litigation by “another State.”¹⁹

Finally, under “[i]nternal self-government,” the inquiry assessed the “[n]ature and measure of control or interference, if any, by the government of another State in respect of the internal government,” as

¹⁴ *But cf.* Gary Lawson & Robert D. Sloane, *The Constitutionality of Decolonization by Associated Statehood: Puerto Rico’s Legal Status Reconsidered*, 50 B.C. L. REV. 1123, 1160–65 (2009) (arguing that Puerto Rico’s status does not contravene international law because it “enjoys virtually complete autonomy over its local affairs,” *id.* at 1160, a judgment this piece disputes).

¹⁵ G.A. Res. 742 (VIII) (Nov. 27, 1953) (“Factors Indicative of the Attainment of Independence or Other Separate Systems of Self-Government,” *id.*, annex); Lawson & Sloane, *supra* note 14, at 1160–65.

¹⁶ G.A. Res. 742 (VIII), *supra* note 15, annex, pt. III, at 23; *see id.*, annex, pt. I, at 22.

¹⁷ *Id.*, annex, sec. II.A, at 22.

¹⁸ *Id.*

¹⁹ *Id.*, annex, sec. II.B, at 22.

well as “[p]articipation of the population”; whether the electoral system was “conducted without direct or indirect interference from a foreign government”; and the territory’s “[d]egree of autonomy in respect of economic, social and cultural affairs.”²⁰

Again, the factors set out standards for self-governance where a territory was *not* to attain full independence. These factors worked so well that — today, over sixty years later — they remain the standard for determining a territory’s political status, incorporated as the appropriate guiding criteria through subsequent U.N. resolution.²¹ The factors continue to be the closest thing in international law to a clear, concrete set of guidelines for evaluating claims to self-governance, making them a powerful analytical tool for understanding the implications of PROMESA and the potential federal imposition of the death penalty.

2. *The Case from the U.S. Delegation.* — The linchpin of the U.S. case presented to the United Nations to show Puerto Rican self-government in 1953 was the “compact” theory. The idea was that a “compact” had been formed with President Truman’s signing of Public Law 600 in 1950,²² which provided the legal basis for the holding of a Puerto Rican constitutional referendum on the Act itself.²³ Once the referendum approved Public Law 600, the Puerto Rican legislature was empowered to assemble a constitutional convention “[t]o provide for the organization of a constitutional government by the people of Puerto Rico.”²⁴ The elected convention delegates modeled the document, at least structurally, on the American Constitution, and the Puerto Rican people ratified the new constitution in March 1952.²⁵

²⁰ *Id.*, annex, sec. II.C, at 22–23.

²¹ G.A. Res. 1541 (XV) (Dec. 15, 1960). Resolution 1541 sets out the “principles” that guide a determination of whether an Article 73(e) obligation exists, and incorporates and reiterates the self-governance factors from Resolution 742. *Id.*

²² See Act of July 3, 1950, Pub. L. No. 81-600, 64 Stat. 319. Public Law 600 was preceded three years earlier by the Act of Aug. 5, 1947 (Elective Governor Act), Pub. L. No. 80-362, 61 Stat. 770 (1947), which permitted Puerto Rico to directly elect its governor, though appointments to its supreme court remained the responsibility of the U.S. President. Juan R. Torruella, *¿Hacia Dónde Vas Puerto Rico?*, 107 YALE L.J. 1503, 1512 (1998) (reviewing TRÍAS MONGE, *supra* note 10).

²³ Hector, *supra* note 4, at 121.

²⁴ Act of July 3, 1950, Pub. L. No. 81-600, § 1, 64 Stat. at 319.

²⁵ See JOSÉ TRÍAS MONGE, 3 HISTORIA CONSTITUCIONAL DE PUERTO RICO 74–78 (1982); Rafael Cox Alomar, *The Ideological Decolonization of Puerto Rico’s Autonomist Movement*, in RECONSIDERING THE INSULAR CASES 129, 152–53 (Gerald L. Neuman & Tomiko Brown-Nagin eds., 2015); Hector, *supra* note 4, at 121.

Public Law 600 reads: “[F]ully recognizing the principle of government by consent, this Act is now adopted *in the nature of a compact* so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption.”²⁶ Moreover, the term “compact” (without “in the nature of”) was repeated in the joint resolution that ratified the new Puerto Rican constitution.²⁷ At the United Nations, the U.S. delegation emphasized the compact’s *bilateral* nature, its terms changeable only “by common consent.”²⁸ In a speech to the Committee on Information from Non-Self-Governing Territories, a U.S. delegate noted: “A compact . . . is far stronger than a treaty. A treaty . . . can be denounced by either side, whereas a compact cannot be denounced by either party unless it has the permission of the other.”²⁹

To bolster its case, the U.S. delegation referenced *Mora v. Torres*,³⁰ decided earlier that year in the District Court of Puerto Rico.³¹ In an extensive discussion, Judge Benjamín Ortiz, an associate justice of the Puerto Rican supreme court sitting as acting U.S. district judge,³² had reformulated the basis for the applicability of the Fifth Amendment to Puerto Rico as stemming from the compact and what he perceived to be “the new relationship established between the United States and Puerto Rico under Public Law 600.”³³ Judge Ortiz had remarked: “Under the new relationship now existing, Puerto Rico enjoys the *total substance of self government* and there is a *plentitude of government by consent*, which realities are incompatible with the previous status of Puerto Rico as a possession, dependency or territory.”³⁴ No longer

²⁶ Act of July 3, 1950, Pub. L. No. 81-600, § 1, 64 Stat. at 319 (emphasis added).

²⁷ Act of July 3, 1952 (Public Law 447), Pub. L. No. 82-447, 66 Stat. 327. Public Law 600 required congressional approval to effectuate the Puerto Rican Constitution, approval that was given, notably, after Puerto Rico acceded to congressional requests to remove already ratified provisions that guaranteed a host of social and economic rights inspired by the Universal Declaration of Human Rights. Hector, *supra* note 4, at 121–22.

²⁸ Torruella, *supra* note 22, at 1514 (quoting H. COMM. ON FOREIGN AFFAIRS, 83D CONG., EIGHTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS 241 (Comm. Print 1954) (written by Reps. Frances P. Bolton and James P. Richards)).

²⁹ *Id.* at 1516 (first alteration in original) (quoting Press Release, U.S. Mission to the United Nations, Statement by Mr. Mason Sears, United States Representative in the Committee on Information from Non-Self Governing Territories 2 (Aug. 28, 1953) (on file with the Harvard Law Review) [hereinafter Sears Press Release]).

³⁰ 113 F. Supp. 309 (D.P.R. 1953), *aff’d*, 206 F.2d 377 (1st Cir. 1953).

³¹ Torruella, *supra* note 22, at 1515–17; *see also* RAFAEL COX ALOMAR, EN LA ENCRUCIJADA 422 (2015); Sears Press Release, *supra* note 29, at 2.

³² Exec. Order No. 10,437, 3 C.F.R. 930 (1949–1953).

³³ *Mora*, 113 F. Supp. at 313. The applicability of the Fifth Amendment was a contested issue because, in 1922, *Balzac v. Porto Rico*, 258 U.S. 298 (1922), one of the famed *Insular Cases*, had determined that Puerto Rico was an unincorporated territory to which not all the provisions of the Constitution applied. *See id.* at 313.

³⁴ *Mora*, 113 F. Supp. at 313–14 (emphasis added).

could the applicability of constitutional provisions be judged on Puerto Rico's status as a possession; constitutional rights had to be considered in light of the substance of the agreement between Puerto Rico and the United States.³⁵ The holding of the case was later affirmed by the First Circuit,³⁶ which maintained that the Commonwealth was subject to "the applicable provisions of the [C]onstitution of the United States," though the First Circuit reserved judgment on whether the right to due process originated in the Fifth or Fourteenth Amendment, and whether the Puerto Rican constitution was really a constitution or merely another organic act.³⁷ At the United Nations, however, *Mora* was the basis for reassurances that the "bilateral compact . . . had been accepted by both [sides] and . . . in accordance with *judicial decisions*, could not be amended without common consent."³⁸

While the precise contours of "*in the nature of a compact*" were and continue to be heavily disputed,³⁹ Public Law 600 was intended to *signal* an extension of self-government in Puerto Rico, even if it failed to transform the relationship between Congress and Puerto Rico.⁴⁰ The Senate committee that reviewed the Act at the bill stage, for example, wrote a report that indicated approval premised, at least in part, on self-government being "embodied in the [U.N.] Charter," so that Public Law 600's "enactment would *enhance the prestige* of the United States in the eyes of the dependent peoples of the world."⁴¹ The *Washington Post* declared that the law's passing signaled an "effective riposte to Soviet yelpings about American imperialism";⁴² the *New York Times* wrote that the United States was "disproving the Communist and Nationalist charges of 'Yankee imperialism.'"⁴³ Public Law 600 offered an "opportunity to respond to charges that Puerto Rico was a colony," even as Congress reserved the question of

³⁵ See *id.* at 319.

³⁶ *Mora v. Mejias*, 206 F.2d 377 (1st Cir. 1953).

³⁷ *Id.* at 382 (quoting Act of July 3, 1950, Pub. L. No. 81-600, § 3, 64 Stat. 319, 319); see *id.* at 387.

³⁸ Torruella, *supra* note 22, at 1517 (quoting U.N. GAOR, 4th Comm., 8th Sess., 350th mtg. at 225, U.N. Doc. A/C.4/SR.350 (Nov. 3, 1953) (emphasis added)).

³⁹ See, e.g., Pedro Cabán, *Redefining Puerto Rico's Political Status*, in COLONIAL DILEMMA: CRITICAL PERSPECTIVES ON CONTEMPORARY PUERTO RICO 19, 23 (Edwin Meléndez & Edgardo Meléndez eds., 1993) ("The nature of this compact of mutual association was, and continues to be, legally and politically obscure."); see also SURENDRA BHANA, THE UNITED STATES AND THE DEVELOPMENT OF THE PUERTO RICAN STATUS QUESTION 1936-1968, at 179-80 (1975) (describing three contemporaneous interpretive positions taken on Public Law 600).

⁴⁰ It is the reality of the underlying dynamic that is significant. "International law does not, as a rule, inquire into the internal laws of States; it asks only whether, in substance, a State has met its international legal obligations." Lawson & Sloane, *supra* note 14, at 1158.

⁴¹ BHANA, *supra* note 39, at 129 (emphasis added).

⁴² *Id.* at 133 (quoting 96 CONG. REC. app. at 5039 (1950)).

⁴³ *Id.* at 147 (alteration in original) (quoting Editorial, *Puerto Rico's Constitution*, N.Y. TIMES, Mar. 5, 1952, at 28).

whether it was actually limiting its powers over the island.⁴⁴ Since then, the move has enabled the United States to court a narrative of postcolonialism⁴⁵ while Puerto Rico sees important internal questions settled by U.S. courts and Congress. By delisting the island, the United States escaped accountability for some of the international norms it worked to create, allowing ongoing violations of Puerto Rican sovereignty without international condemnation.

Statements made by Puerto Rican government officials also indicated that the compact had currency on the island as a *bilateral*, consent-driven agreement (or that, at least, such was the case made to the general population). Puerto Rican members of the U.S. delegation to the United Nations “claimed that the jurisdiction of the Federal Government in Puerto Rico [was] based on a bilateral compact to which Puerto Rico [was] a party.”⁴⁶ Puerto Rican Governor Luis Muñoz Marín declared that the commonwealth arrangement “[took] away from the very basis of the relationship [between Puerto Rico and the United States] the nature and onus of colonialism.”⁴⁷ Similarly, he later stated: “[T]he last juridical vestiges of colonialism have been abolished in [our] relationship [with the United States]. . . . We are not . . . taking another step in self-government — this *is* self-government.”⁴⁸

Yet Washington floated sharply divergent legal opinions. At a congressional hearing on the potential approval of the Puerto Rican constitution, one of the law’s cosponsors confirmed that Congress continued to reserve plenary powers for itself.⁴⁹ The Senate and House reports stated that the law “[will] not change Puerto Rico’s fundamen-

⁴⁴ *Id.* at 133.

⁴⁵ *See, e.g.*, President Barack Obama, Remarks by the President at CEO Business Summit in Brasilia, Brazil (Mar. 19, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/03/19/remarks-president-ceo-business-summit-brasilia-brazil> [<https://perma.cc/3EWD-2CFQ>] (“Like you, we threw off the yoke of colonialism . . .”). The narrative from President Obama, in particular, had a strong personal bent. *See, e.g.*, President Barack Obama, Remarks by the President to the Ghanaian Parliament (July 11, 2009), <https://obamawhitehouse.archives.gov/the-press-office/remarks-president-ghanaian-parliament> [<https://perma.cc/C0FY-LG3W>] (“In [my grandfather’s] life, colonialism wasn’t simply the creation of unnatural borders or unfair terms of trade — it was something experienced personally . . .”).

⁴⁶ Torruella, *supra* note 22, at 1516.

⁴⁷ Muñoz, *supra* note 9, at 11 (second alteration in original) (quoting GORDON K. LEWIS, *PUERTO RICO: FREEDOM AND POWER IN THE CARIBBEAN* 413 (1963)). Indeed, it was Governor Muñoz Marín who initiated the process of removing Puerto Rico from the list of Non-Self-Governing Territories; in a letter to President Truman, he argued that “the people of Puerto Rico were not satisfied to remain in a status which, in theory although not in practice, reflected the taint of colonialism.” TRÍAS MONGE, *supra* note 10, at 121.

⁴⁸ Muñoz, *supra* note 9, at 11 (emphasis added) (quoting Robert J. Hunter, *Historical Survey of the Puerto Rico Status Question*, in *STATUS OF PUERTO RICO* 50, 120–21 (1966)).

⁴⁹ BHANA, *supra* note 39, at 156.

tal political, social, and economic relationship to the United States.”⁵⁰ While testifying before Congress, Muñoz Marín remarked, “if the people of Puerto Rico . . . go crazy, Congress can always get around and legislate again.”⁵¹ At House hearings, Resident Commissioner Antonio Fernós-Isern commented that “the authority of the government of the United States . . . to legislate in case of need w[ill] always be there.”⁵² Fernós-Isern later noted that the law “w[ill] not change the status of the island of Puerto Rico relative to the United States . . . [and] w[ill] not alter the powers of sovereignty [of] the United States.”⁵³ José Trías Monge, later chief justice of the Supreme Court of Puerto Rico and a “key player[]” in Public Law 600’s approval by the Puerto Rican referendum,⁵⁴ described the hearings as “a harrowing ordeal and a tawdry record.”⁵⁵

The possibility that the compact was *not* transformative was disquieting to local *independentistas*, who expressed skepticism in legal memoranda and newspaper editorials.⁵⁶ In fact, the notion that compact by mutual consent was a sham was so alarming to pro-independence nationalists that two sympathizers attempted an assassination of President Harry Truman months before the Puerto Rican referendum.⁵⁷ Potentially confirming their fears, six decades later, within the context of the “narrow, historically focused question”⁵⁸ of whether Puerto Rico was a separate sovereign for double jeopardy purposes, the U.S. Supreme Court concluded: “Congress conferred the authority to create the Puerto Rico constitution Congress [is] the original source of power for Puerto Rico’s prosecutors The is-

⁵⁰ TRÍAS MONGE, *supra* note 10, at 113 (quoting S. REP. NO. 81-1779, at 5 (1950); H.R. REP. NO. 81-2275, at 3 (1950), as reprinted in 1950 U.S.C.C.A.N. 2681, 2682).

⁵¹ JUAN R. TORRUELLA, THE SUPREME COURT AND PUERTO RICO 149 (1985) (emphasis omitted) (quoting *Statement by the Governor of Puerto Rico: Hearing on H.R. 7674 Before the H. Comm. on Pub. Lands*, 81st Cong. 18 (1950) (statement of Luis Muñoz Marín, Governor, Puerto Rico)).

⁵² TRÍAS MONGE, *supra* note 10, at 112 (quoting *Statement by the Governor of Puerto Rico: Hearing on H.R. 7674 Before the H. Comm. on Pub. Lands*, 81st Cong. 18 (1950) (statement of Antonio Fernós-Isern, Resident Comm’r, Puerto Rico)).

⁵³ *Id.* at 113 (quoting *Puerto Rico Constitution: Hearing on S. 3336 Before the S. Subcomm. on Interior and Insular Affairs*, 81st Cong. 4 (1950) (statement of Antonio Fernós-Isern, Resident Comm’r, Puerto Rico)).

⁵⁴ Torruella, *supra* note 22, at 1515.

⁵⁵ TRÍAS MONGE, *supra* note 10, at 118.

⁵⁶ See BHANA, *supra* note 39, at 131 (noting that an *independentista* legal memorandum argued that “the bill sheltered a hidden motive”).

⁵⁷ TRÍAS MONGE, *supra* note 10, at 113. An armed struggle for Puerto Rican independence carried on; Oscar López Rivera, a prominent independence activist, was imprisoned for thirty-five years before his sentence was commuted in January 2017. See Sam Levin, *Obama Commutes Sentence for Political Prisoner Oscar López Rivera*, THE GUARDIAN (Jan. 17, 2017, 5:55 PM), <https://www.theguardian.com/us-news/2017/jan/17/barack-obama-commutes-sentence-oscar-lopez-rivera-puerto-rico-activist> [<https://perma.cc/C3YT-A69Z>].

⁵⁸ *Puerto Rico v. Sanchez Valle*, 136 S. Ct. 1863, 1867 (2016).

land's Constitution, significant though it is, does not break the chain."⁵⁹

3. *Skepticism at the United Nations.* — The case for removing Puerto Rico from the list of Non-Self-Governing Territories encountered considerable resistance at the United Nations. As indicated by other historical works, such skepticism was merited; Public Law 600 had *not* brought about the legal and political changes presented to the United Nations.⁶⁰

The disjuncture was not lost upon several delegations. While in debate in the Committee on Information from Non-Self-Governing Territories, the delegate from India⁶¹ concluded that “the present status of Puerto Rico [does] not completely comply with any of the elements of an independent or fully self-governing state.”⁶² The Indian delegate went on to charge: “[L]egal logic in international law could reach but one conclusion: the degree of self-government . . . [does] not conform to the . . . list of factors”⁶³ When the debate progressed to another U.N. body, Indonesia decided much the same: “Puerto Rico [cannot] be considered a territory whose people [have] attained a full measure of self-government.”⁶⁴ Ukraine, likely driven by Cold War considerations, agreed that Puerto Rico “continued to be a United States colony.”⁶⁵

⁵⁹ *Id.* at 1875–76. *Puerto Rico v. Sanchez Valle*, 136 S. Ct. 1863, may not confirm the death of the compact theory, but it should be troubling to the theory's adherents; more troubling still should be the amicus briefs submitted by the Solicitor General and senior Puerto Rican officials, which potentially signal the emergence of a shared understanding that discredits the notion of a transformative constitutional moment. See Brief for the United States as Amicus Curiae Supporting Respondents at 8, *Sanchez Valle* (No. 15-108) (“Congress did not enter into an irrevocable ‘compact’ with Puerto Rico ‘[C]ommonwealth’ reflects . . . significant powers of self-government, but . . . not . . . a constitutional status.”); Brief of Current and Former Senior Puerto Rico Officials as Amici Curiae in Support of Respondents at 9, *Sanchez Valle* (No. 15-108) (“Petitioner is . . . wrong to suggest . . . that Public Law 600 effected a permanent or partial relinquishment of the constitutional authority of each Congress to alter the power exercised by the government of Puerto Rico.”).

⁶⁰ See, e.g., TRÍAS MONGE, *supra* note 10, *passim*; Muñiz, *supra* note 9, *passim*.

⁶¹ India had particular weight, and was held up by the Puerto Rican Independence Party (PIP) as the moral flag bearer in the international campaign against colonialism. Muñiz, *supra* note 9, at 32.

⁶² *Id.* at 29; see also Kathleen McLaughlin, *India Disputes U.S. over Puerto Rico*, N.Y. TIMES, Sept. 1, 1953, at 7 (quoting the Indian representative for the proposition that “Puerto Rico is definitely not a territory which has attained independence, nor is it separate in identity”).

⁶³ Muñiz, *supra* note 9, at 50 (quoting Jorge Morales-Yordan, *The Constitutional and International Status of Puerto Rico*, 18 REVISTA DEL COLEGIO DE ABOGADOS DE PUERTO RICO [REV. C. ABOGADOS P.R.] 5, 77 (1957)).

⁶⁴ *Id.* at 42 (quoting U.N. GAOR, 4th Comm., 8th Sess., 352d mtg. at 240, U.N. Doc. A/C.4/SR.352 (Nov. 4, 1953)). In response, the United States contended “that Indonesia ‘had applied that list quite rigidly.’” *Id.* at 49 (quoting U.N. GAOR, 4th Comm., 8th Sess., 355th mtg. at 253, U.N. Doc. A/C.4/SR.355 (Nov. 5, 1953)).

⁶⁵ *Id.* at 42 (quoting U.N. GAOR, 4th Comm., 8th Sess., 351st mtg. at 233–34, U.N. Doc. A/C.4/SR.351 (Nov. 3, 1953)).

In the General Assembly, the Puerto Rico question prompted vigorous debate.⁶⁶ While most of the battle was waged on procedural, not substantive, lines,⁶⁷ the final vote was telling. The resolution approving the cessation of information about Puerto Rico passed with twenty-six votes in favor, sixteen against, and *eighteen abstentions*.⁶⁸ That is, from sixty voting delegations in the General Assembly, only around forty-three percent voted in favor. It was, moreover, a vote for which the United States had “spared no effort to line up support.”⁶⁹

The distance between the representations made to support the removal of Puerto Rico from Article 73(e) and the island’s conditions was only further highlighted by subsequent work on decolonization at the United Nations. The specialized Committee on Decolonization was created in 1961 to monitor compliance with the Declaration on Decolonization.⁷⁰ Despite its mandate, and two petitions from Cuba that the Committee examine Puerto Rico’s status, the Committee refused to consider the Puerto Rico question for the first decade of its existence.⁷¹ The United States, a member, objected to both petitions — the first time, on the basis that Puerto Rico’s status had been resolved in 1953, and the second time, tellingly, because consideration of the question would be “undue intervention in a United States domestic matter.”⁷² The Committee managed to place Puerto Rico on the agenda only after the United States had resigned as a participant; the Committee then issued multiple resolutions emphasizing “the inalienable right of the people of Puerto Rico to self-determination and independence.”⁷³ In the 1980s, it twice recommended that the General Assembly place Puerto Rico on its agenda; the plan was defeated both times by the United States.⁷⁴

B. Case Studies in Puerto Rican Non-Self-Governance

The United States reaped a windfall by manipulating Public Law 600’s ambiguity to secure Puerto Rico’s delisting under the U.N. factors. To show that Puerto Rico should not remain delisted, this section

⁶⁶ See *id.* at 45.

⁶⁷ The controversy centered on whether a vote to carry draft resolutions by simple majority extended to the draft resolutions concerning the status of Puerto Rico, Surinam, and the Netherlands Antilles. *Id.* at 46. The latter two were Dutch possessions. See generally CORNELIS CH. GOSLINGA, A SHORT HISTORY OF THE NETHERLANDS ANTILLES AND SURINAM (1979).

⁶⁸ *Id.* at 47–48.

⁶⁹ *Id.* at 51 (quoting SHERMAN S. HAYDEN & BENJAMIN RIVLIN, NON-SELF-GOVERNING TERRITORIES: STATUS OF PUERTO RICO 11 (1954)).

⁷⁰ *Id.* at 67–68.

⁷¹ TRÍAS MONGE, *supra* note 10, at 137–38.

⁷² *Id.*

⁷³ *Id.* at 138.

⁷⁴ *Id.* at 139.

will focus on two case studies: PROMESA and the death penalty. Case studies are appropriate under the case-sensitive analysis recommended by General Assembly Resolution 1541, which makes clear the United Nations' concern with the arbitrary subordination of territories.⁷⁵ A dominant state cannot have "substantial discretion[] to intervene in the reserved or internal affairs of the [a]ssociated [s]tate";⁷⁶ where it does, it runs afoul of U.N. standards for self-governance. These case studies confirm the substantial structural and legal power wielded by the U.S. legislature and courts over matters of great internal significance to Puerto Rico. PROMESA has enabled wide encroachment into the local government's structural powers, while a federal unwillingness to consider Puerto Rico's constitutional prohibition on capital punishment has overridden Puerto Rican discretion on a central political point.

1. *The Broken Promise of PROMESA.* — Puerto Rico's long-running financial crisis has been well documented, and its need for restructuring alternatives clear. Its economic troubles began in 2006, when the end of attractive tax exemptions for U.S. manufacturers led to the implosion of the island's manufacturing sector.⁷⁷ Economic activity stalled, decreasing by at least fourteen percent by late 2015, and public debt mushroomed to \$72 billion.⁷⁸ Excluded from seeking bankruptcy relief through Chapter 9,⁷⁹ and prevented from legislating its own restructuring regime in *Puerto Rico v. Franklin California Tax-Free Trust*⁸⁰ on preemption grounds,⁸¹ Puerto Rico had no real choice but to turn to Congress to find a solution to its fiscal crisis.

Congress replied with PROMESA, a statute that created an Oversight Board that has been accused of "bring[ing] to mind the days of Theodore Roosevelt."⁸² Under PROMESA, the Board has extensive powers to bind Puerto Rico's government, and is not subject to Puerto Rican control or oversight.⁸³ The arrangement speaks directly to an exceedingly intrusive relationship with Puerto Rico's internal government, and thereby runs squarely counter to the U.N. factors weighing

⁷⁵ See G.A. Res. 1541 (XV), *supra* note 21, annex princ. V, at 29.

⁷⁶ JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 633 (2d ed. 2007).

⁷⁷ See *For Richer, for Poorer*, *THE ECONOMIST: FREE EXCHANGE* (Nov. 28, 2015), <http://www.economist.com/news/finance-and-economics/21679197-one-way-or-another-americas-government-will-end-up-bailing-out-puerto-rico> [<https://perma.cc/3H9G-SVUW>].

⁷⁸ *Id.*

⁷⁹ 11 U.S.C. § 101(52) (2012).

⁸⁰ 136 S. Ct. 1938 (2016).

⁸¹ *Id.* at 1942.

⁸² Vann R. Newkirk II, *Congress's Promise to Puerto Rico*, *THE ATLANTIC* (May 19, 2016), <http://www.theatlantic.com/politics/archive/2016/05/congress-puerto-rico-bill-promise/483572> [<https://perma.cc/7D6U-S7T6>].

⁸³ See *id.*

the “[n]ature and measure of control or interference, if any, by the government of another State in respect of . . . internal government,”⁸⁴ as well as to the consideration of the “[d]egree of autonomy in respect of economic, social and cultural affairs, as illustrated by the degree of freedom from economic pressure.”⁸⁵ An examination of the Oversight Board’s structure, however, drives home how far the Act allows the Board to intervene in internal matters on the island.

The Board has, first, considerable control over the governor, the head of the island’s executive branch under Article IV of the Puerto Rican constitution.⁸⁶ At its sole discretion, the Board can require that the governor provide budgets, or monthly or quarterly reports, of any “covered territorial instrumentality as [it] determines to be necessary.”⁸⁷ The Board can ask any Puerto Rican government official for any information that it deems necessary to carry out its responsibilities, and has “direct access to [any necessary] information systems.”⁸⁸

The Board is also responsible for approving the required “Fiscal Plans,” which cover all substantive aspects of fiscal planning on the island.⁸⁹ It must approve the territory’s public budget, which must be deemed “compliant” with the Board’s fiscal priorities.⁹⁰ If a budget is noncompliant, or cash flows are below what the Board hoped, the Board can “institute automatic hiring freezes,” or “prohibit the covered territorial instrumentality from entering into any contract or engaging in any financial or other transactions, unless . . . previously approved by the Oversight Board.”⁹¹

Another provision authorizes the expedited approval, at the Board’s discretion, of “Critical Projects,” which can include ventures that “improve performance of energy infrastructure and overall energy efficiency,” or that “contribute to transitioning to privatized generation capacities in Puerto Rico.”⁹² The section has already stirred concerns that it might enable the sale of public parks.⁹³

⁸⁴ G.A. Res. 742 (VIII), *supra* note 15, annex sec. II.C.1, at 22–23.

⁸⁵ *Id.*, annex sec. II.C.3 (emphasis added).

⁸⁶ P.R. CONST. art. IV, § 1.

⁸⁷ Pub. L. No. 114-187, § 101(d)(1)(B), 130 Stat. 549, 553 (2016). The Puerto Rican government has already voiced concerns that deadlines set by the Board are “too tight,” rushing fiscal plans and potentially destabilizing management of the public debt. See Nick Brown, *Puerto Rico Governor Seeks More Time on Fiscal Plan, Lawsuit Freeze*, REUTERS (Jan. 5, 2017, 2:09 PM), <http://www.reuters.com/article/puertorico-debt-fiscal-idUSL1N1EV1FY> [https://perma.cc/R839-LV5W].

⁸⁸ Pub. L. No. 114-187, § 104(c)(2), 130 Stat. at 558.

⁸⁹ *Id.* § 201(a), (b)(1), 130 Stat. at 563–64.

⁹⁰ *Id.* § 202(c)(1), 130 Stat. at 566.

⁹¹ *Id.* § 203(d)(2)(B), 130 Stat. at 569–70.

⁹² *Id.* § 503(a)(1)(F), 130 Stat. at 599.

⁹³ See, e.g., Gerardo E. Alvarado León, *Advierten Nefastos Impactos al Entorno con la Junta de Control Fiscal*, NUEVO DÍA (July 27, 2016, 8:00 AM), <http://www.elnuevodia.com/>

These are incredibly broad powers, cutting to the heart of governance. Yet the Board is also clearly a direct instrumentality of U.S. federal power — an instrumentality of the dominant state. Its members are appointed by the President, without the advice and consent of the U.S. Senate, mostly from a list of individuals submitted by majority and minority leaders in the U.S. Congress.⁹⁴ The Puerto Rican governor can sit on the Board only *ex officio*, without voting rights.⁹⁵ Puerto Rico’s former governor, Alejandro García Padilla, has said that the Oversight Board is “not consistent with . . . basic democratic principles.”⁹⁶ The Board convenes, notably, in New York City.⁹⁷

If the factors’ concern for the independence of internal territorial government is to be meaningful, PROMESA’s sweeping, invasive powers must run afoul of that independence. Consider again the factor on “[n]ature and measure of control or interference . . . by the government of another State.”⁹⁸ With its near-total power over the island’s purse strings, the Board can influence nearly any area of policymaking in Puerto Rico. As an “outside agency,” it has *direct* and significant control over the governor and, through him or her, the executive branch. The Board also undercuts any autonomy Puerto Rico had “in respect of economic [and] social . . . affairs,” and Board members might even be characterized as falling into the factors’ illustrative case — “a foreign minority group which, by virtue of the help of a foreign Power, has acquired a privileged economic status prejudicial to the general economic interest of the people of the Territory.”⁹⁹ As the Board meets, 1600 miles from San Juan, islanders fear the closures of schools and hospitals, as well as deep cuts to government pensions.¹⁰⁰

2. “*The Death Penalty Shall Not Exist.*” — The death penalty inspires special controversy, involving profoundly normative (and thus often cultural, social, and political) assessments of the value of life and

noticias/locales/nota/adviertenefastosimpactosalentornoconlajuntadecontrolfiscal-2224685 [https://perma.cc/Q86Z-X4PL].

⁹⁴ Pub. L. No. 114-187, § 101(e), 130 Stat. at 554.

⁹⁵ *Id.* § 101(e)(3), 130 Stat. at 555.

⁹⁶ Newkirk, *supra* note 82.

⁹⁷ Katherine Greifeld, *Puerto Rico Control Board Names Carrion Chair amid Protests*, BLOOMBERG (Sept. 30, 2016, 3:38 PM), <http://www.bloomberg.com/news/articles/2016-09-30/puerto-rico-control-board-names-jose-carrion-as-chairman> [https://perma.cc/XTS2-L33K].

⁹⁸ G.A. Res. 742 (VIII), *supra* note 15, annex sec. II.C.1, at 22–23.

⁹⁹ *Id.* annex sec. III.C.3, at 23. While four of the inaugural Board’s members “have Puerto Rican backgrounds,” the Board itself is arguably representative of a minority group interest. See Steven Mufson, *White House Names Seven to Puerto Rico Oversight Board*, WASH. POST (Aug. 31, 2016), https://www.washingtonpost.com/business/economy/white-house-names-seven-to-puerto-rico-oversight-board/2016/08/31/9cee9376-6f8b-11e6-9705-23e51a2f424d_story.html [https://perma.cc/GV5B-GBED].

¹⁰⁰ See *Severe Budget Cuts Loom as Puerto Rico’s Debt Crisis Continues*, NPR (Dec. 17, 2016, 5:02 PM), <http://www.npr.org/2016/12/17/505996778/severe-budget-cuts-loom-as-puerto-ricos-debt-crisis-continues> [https://perma.cc/V5R8-GQ54].

of the role of the state in mediating conflicts between the proper scope of justice and the justified use of violence. Since 1952, Puerto Rico's constitution has answered these questions by prohibiting the death penalty¹⁰¹ — a position that puts Puerto Rico in agreement with a large and growing number of nations, but not with the U.S. federal government. U.S. courts have, in turn, insisted on the applicability of the federal death penalty to Puerto Rico. This insistence plainly undercuts Puerto Rico's "autonomy in respect of . . . social and cultural affairs."¹⁰²

It is difficult to imagine a more textually straightforward prohibition — the Puerto Rican constitution reads, simply: "The death penalty shall not exist."¹⁰³ The provision dates to the constitution's ratification in the island-wide referendum in 1952 referenced above; it is the same constitution that had to undergo approval by Congress to be operative.¹⁰⁴ The constitutional prohibition was heavily influenced by the Universal Declaration of Human Rights, which wound its way into the Puerto Rican constitutional project through a report from the Commission of the Bill of Rights emphasizing that "[t]he Bill of Rights establishes immediately from the onset the principle that the death penalty *shall never* exist in Puerto Rico."¹⁰⁵

In Puerto Rico, the death penalty had been abolished by statute in 1929,¹⁰⁶ and the last execution on the island occurred in 1927,¹⁰⁷ so that approximately twenty-five years had elapsed between the constitution's ratification and the last state-sanctioned execution in Puerto Rico. Another forty-eight would go by before the unavailability of capital punishment on the island was challenged by federal authorities.

The issue arose under the Federal Death Penalty Act of 1994¹⁰⁸ (FDPA), which authorizes use of the death penalty in federal cases involving specified offenses.¹⁰⁹ While the Act is otherwise silent on its applicability to Puerto Rico, the Puerto Rican Federal Relations Act¹¹⁰ (PRFRA) specifies that "[t]he statutory laws of the United States *not*

¹⁰¹ P.R. CONST. art. II, § 7.

¹⁰² G.A. Res. 742 (VIII), *supra* note 15, annex sec. II.C.3, at 23.

¹⁰³ P.R. CONST. art. II, § 7.

¹⁰⁴ Ricardo Alfonso, *The Imposition of the Death Penalty in Puerto Rico: A Human Rights Crisis in the Path Towards Self-Determination*, 76 REV. JUR. U. P.R. 1077, 1085 (2007). Congress could have chosen to alter section 7, as it did the provisions guaranteeing socioeconomic rights, but it chose not to. *See id.* at 1085 n.26.

¹⁰⁵ *Id.* at 1085 (alteration in original) (emphasis added) (translating DIARIO DE SESIONES: PROCEDIMIENTOS Y DEBATES DE LA CONVENCION CONSTITUYENTE DE PUERTO RICO 570 (1952), *microformed on* Revistas Hispano-Americanas, Roll 219 (Cambridge Microfilm Co.)).

¹⁰⁶ P.R. LAWS ANN. tit. 34, § 995 (2016).

¹⁰⁷ Alfonso, *supra* note 104, at 1085.

¹⁰⁸ Pub. L. No. 103-322, 108 Stat. 1959.

¹⁰⁹ 18 U.S.C. § 3591(a) (2012) (specifying applicability to particular crimes, mostly murder).

¹¹⁰ Pub. L. No. 64-368, 39 Stat. 951 (1917).

locally inapplicable . . . shall have the same force and effect in Puerto Rico as in the United States.”¹¹¹ While the meaning of “not locally inapplicable” has been heavily litigated, little consensus exists on its scope.¹¹²

The matter came to a head in *United States v. Acosta Martinez*.¹¹³ The conflict had been brewing for some time — pursuant to an understanding between federal prosecutors and local authorities, “the Puerto Rico U.S. Attorney’s Office ha[d] submitted the largest number of potential death penalty cases (59) of any of the 94 federal districts since . . . 1995.”¹¹⁴ When finally asked to determine the applicability of the death penalty to Puerto Rico, the district court firmly held that it could not be imposed on the island, emphasizing the exceptional nature of death and the particularly deeply held opposition the death penalty inspired.¹¹⁵ Judge Casellas noted the “fundamental principle that death is different,”¹¹⁶ “unique in its total irrevocability.”¹¹⁷ He emphasized that the prohibition “stands as an expression of the will of the Puerto Rican people,”¹¹⁸ conveying “the people of Puerto Rico’s firm cultural, moral and religious convictions against the death penalty.”¹¹⁹ He concluded that the “culture, traditions and values [of Puerto Rico] are repugnant to the death penalty.”¹²⁰

The First Circuit Court of Appeals, however, reversed, holding the death penalty applicable.¹²¹ It based its holding on a finding of congressional intent to apply substantive statutes defining federal crimes

¹¹¹ 48 U.S.C. § 734 (2012) (emphasis added).

¹¹² See Jasmine B. Gonzales Rose, *The Exclusion of Non-English-Speaking Jurors: Remediating a Century of Denial of the Sixth Amendment in the Federal Courts of Puerto Rico*, 46 HARV. C.R.-C.L. L. REV. 497, 536 (2011) (“There is no settled rule to determine whether a federal statute is locally inapplicable to Puerto Rico.”); Elizabeth Vicens, Note, *Application of the Federal Death Penalty Act to Puerto Rico: A New Test for the Locally Inapplicable Standard*, 80 N.Y.U. L. REV. 350, 350–51 (2005).

¹¹³ 106 F. Supp. 2d 311 (D.P.R. 2000), *rev’d*, 252 F.3d 13 (1st Cir. 2001). The “[d]efendants were charged . . . with violating . . . 18 U.S.C. § 924(j) (firearm murder in relation to a crime of violence) and 18 U.S.C. § 1513(a)(1)(B) (killing a person in retaliation for providing law enforcement officials with information relating to the possible commission of a federal offense).” *Id.* at 312.

¹¹⁴ *Id.* at 312 n.1 (emphasis omitted) (quoting Rory K. Little, *The Federal Death Penalty: History and Some Thoughts About the Department of Justice’s Role*, 26 FORDHAM URB. L.J. 347, 357 n.36 (1999)).

¹¹⁵ *Id.* at 317–21.

¹¹⁶ *Id.* at 317 (quoting *Schiro v. Farley*, 510 U.S. 222, 238 (1994) (Blackmun, J., dissenting)).

¹¹⁷ *Id.* at 318 (emphasis omitted) (quoting *Furman v. Georgia*, 408 U.S. 238, 306 (Stewart, J., concurring)).

¹¹⁸ *Id.* at 320 (emphasis omitted) (quoting *Figueroa v. Puerto Rico*, 232 F.2d 615, 620 (1st Cir. 1956)).

¹¹⁹ *Id.* (emphasis omitted).

¹²⁰ *Id.* at 321 (emphasis omitted).

¹²¹ *United States v. Acosta-Martinez*, 252 F.3d 13, 16 (1st Cir. 2001).

and their punishments to Puerto Rico.¹²² Such a result, the court argued, did not flout Puerto Rican sovereignty, but rather reflected a congressional choice to “simply retain[] federal power over federal crimes.”¹²³ The court analogized the limits of the Puerto Rican constitution to those of state constitutions, reaffirming the ultimate power of Congress: “Puerto Rico is not alone in its abhorrence of the death penalty. Some twelve states join it in its views. But those state constitutions also do not trump federal criminal law when Congress intends otherwise.”¹²⁴ Arguments made by the defendants and amici were dismissed as “political . . . , not . . . legal.”¹²⁵

The Court of Appeals’ decision provoked an outcry in Puerto Rico, leading to protests and a statement from the Puerto Rican Bar Association President, Arturo Luis Dávila Toro, that “[w]e don’t believe in capital punishment, and they are trying to impose it on us.”¹²⁶ Papers cited local politicians calling the decision “a betrayal of the island’s autonomy, culture and law, in particular its Constitution.”¹²⁷ The issue was defused only when, on remand, the jury acquitted the *Acosta Martinez* defendants because of a lack of evidence.¹²⁸

The outrage on the island was well founded. The First Circuit’s assertion that the Puerto Rican constitution was meant to apply only to local crimes is hard to square with the stark language in the Puerto Rican Constitution: “The death penalty shall not exist.”¹²⁹ The most natural reading of the text is not that capital punishment will not apply to Puerto Rican crimes — but rather that capital punishment *will not exist on the island*. PRFRA’s plain meaning indicates that federal

¹²² *Id.* at 18–19 (“Those statutes . . . are very clear that Puerto Rico is not exempt from these death penalty provisions.” *Id.* at 19.)

¹²³ *Id.* at 20. Puerto Rico, the court reasoned, was still free to bar the death penalty for prosecutions under local criminal laws, in local courts. *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* at 21.

¹²⁶ Colin Miller, *Sovereign Impunity: Why Double Jeopardy Should Apply in Puerto Rico*, 73 WASH. & LEE L. REV. ONLINE 174, 183 (2016) (alteration in original) (quoting *Puerto Rico and the Death Penalty*, DEATH PENALTY INFO. CTR., <http://www.deathpenaltyinfo.org/node/881> [<https://perma.cc/CW9P-G4CB>]).

¹²⁷ Adam Liptak, *Puerto Ricans Angry that U.S. Overrode Death Penalty Ban*, N.Y. TIMES (July 17, 2003), <http://www.nytimes.com/2003/07/17/us/puerto-ricans-angry-that-us-overrode-death-penalty-ban.html> [<https://perma.cc/3HBY-Q9LR>].

¹²⁸ Abby Goodnough, *Acquittal in Puerto Rico Averts Fight over Government’s Right to Seek Death Penalty*, N.Y. TIMES (Aug. 1, 2003), <http://www.nytimes.com/2003/08/01/us/acquittal-puerto-rico-averts-fight-over-government-s-right-seek-death-penalty.html> [<https://perma.cc/4HDQ-2W5Y>]. While it is ultimately impossible to know whether the jury’s decision was an instance of jury nullification, the prosecutor in the case “refused to read any motives into the jury’s verdict.” Ivan Roman, *Not-Guilty Verdict Thwarts Death-Penalty Battle*, ORLANDO SENTINEL (Aug. 1, 2003), http://articles.orlandosentinel.com/2003-08-01/news/0308010137_1_puerto-rico-capital-punishment-death-penalty [<https://perma.cc/E8BM-UUFN>].

¹²⁹ P.R. CONST. art. 2, § 7.

law applies unless it is inappropriate under local law. While the First Circuit (and, moreover, the Supreme Court) has treated an inquiry into local inapplicability as a matter of congressional intent,¹³⁰ that inquiry seems to be at odds with PRFRA's creation of "significantly enhanced powers of self-government and autonomy" for Puerto Rico.¹³¹

The First Circuit decision's analogy to state constitutions, moreover, drew a false equivalency. Consider Michigan, a committed anti-death penalty jurisdiction and the first and only state to include a ban on capital punishment in its constitution.¹³² As a state, Michigan benefits from a host of "procedural safeguards inherent in the structure of the federal system"¹³³ that Puerto Rico lacks; in the parlance of Resolution 742, Michigan, like the other states, falls within the third set of factors, and enjoys "[l]egislative representation" and "[c]onstitutional considerations"¹³⁴ that protect its political and legal rights.

By contrast, recall the second set of U.N. factors for self-government, which focus on the "nature and measure of control or interference, if any, by the government of another state with respect to internal government."¹³⁵ Retaining the power to override another state's constitutional prescription is a marked interference with internal government. It infringes upon the island's jurisdiction on a constitutional matter of uniquely weighty social and cultural importance. It speaks, again, to a territory that cannot meaningfully exercise separate self-government.

C. *The Implications of Non-Self-Governance*

This Chapter is, again, not the first piece to charge that Puerto Rico is, in effect, a U.S. colony. Grounding the argument in a distinctly internationalist framework, however, provides a lens for understanding the classification's concrete and normative implications — implications that may be significant, both for the United States and the island, on a global scale.

¹³⁰ *E.g.*, *Acosta-Martinez*, 252 F.3d at 18 (citing *Puerto Rico v. Shell Co. (P.R.)*, 302 U.S. 253, 258 (1937)).

¹³¹ *See* *Gonzales Rose*, *supra* note 112, at 538; *see also id.* at 537–39. Academic articles expounding alternative tests — ranging from the employment of a rebuttable presumption to an examination of local conditions — tend to place capital punishment as a paradigmatic "locally inapplicable" case. *See id.* at 539–40.

¹³² MICH. CONST. art. IV, § 46 ("No law shall be enacted providing for the penalty of death."); *United States v. Gabrion*, 648 F.3d 307, 321 n.4 (6th Cir. 2011) ("In 1963, Michigan included its ban on the death penalty in its state constitution, becoming the only state to do so.").

¹³³ *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 552 (1985).

¹³⁴ G.A. Res. 742 (VIII), *supra* note 15, annex pt. III, at 23.

¹³⁵ *Muñiz*, *supra* note 9, at 25.

1. *International and Domestic Political Consequences.* — The first and perhaps most obvious consequence to follow from recognition of Puerto Rico as a Non-Self-Governing Territory would be the resumption of the Article 73(e) reporting requirement. These reports must be prepared for the Secretary-General on an annual basis, and must contain “information relating to the economic, social and educational conditions in the Territor[y].”¹³⁶ A report on Puerto Rico would be meaningful not only for the logistical burden inherent in preparing a yearly dispatch, but also because it would provide a public forum in which figures relating to “economic, social and educational conditions” could be scrutinized. Such a report could include figures indicating 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,¹³⁷ statistics that amount to a humanitarian crisis.¹³⁸ Such reports must also contain “the fullest possible information on political and constitutional developments in the Territories concerned,”¹³⁹ potentially forcing transparency on developments like PROMESA. Article 73(e) reports, moreover, form the basis of the working papers elaborated by the Special Committee. These working papers, in turn, inform the content of the Special Committee’s annual meeting and of the reports it subsequently sends to the General Assembly, where they are available for review by the body’s 193 constituent states.¹⁴⁰ Between April 2015 and March 2016, for example, Article 73(e) reports shaped the content of thirty-three press releases and a working paper on each of the seventeen current Non-Self-Governing Territories, materials that were disseminated to the wider public through radio, television, and U.N. websites.¹⁴¹ Wider promulgation of conditions on the island, especially when framed in terms of non-self-governance, could become a vehicle

¹³⁶ U.N. Secretary-General, *Information from Non-Self-Governing Territories Transmitted Under Article 73 e of the Charter of the United Nations*, ¶ 1, U.N. Doc. A/71/68 (Feb. 1, 2016) [hereinafter *Information from Non-Self-Governing Territories*].

¹³⁷ Natasha Lycia Ora Bannan, *Puerto Rico’s Odious Debt: The Economic Crisis of Colonialism*, 19 CUNY L. REV. 287, 292–93 (2016).

¹³⁸ See, e.g., Danica Coto, *Patients Left in Limbo as More Doctors Flee Puerto Rico*, ASSOCIATED PRESS (Oct. 27, 2016, 12:13 AM), <http://bigstory.ap.org/article/bboa2e8a5e3f4bc381a455fa31c83ac5/patients-left-limbo-more-doctors-flee-puerto-rico> [https://perma.cc/URA5-PVZJ] (“People are waiting much longer for appointments, including one that could be a matter of life or death because there is simply no room . . .”); Vann R. Newkirk II, *Will Puerto Rico’s Debt Crisis Spark a Humanitarian Disaster?*, THE ATLANTIC (May 13, 2016), <http://www.theatlantic.com/politics/archive/2016/05/puerto-rico-treasury-visit/482562> [https://perma.cc/9JHB-4ZSR].

¹³⁹ Press Release, Special Comm. on Decolonization, Gen. Assembly, As Session Opens, Special Committee on Decolonization Approves Two Resolutions Addressing Dissemination of Information on Non-Self-Governing Territories, U.N. Press Release GA/COL/3293 (June 13, 2016), <https://www.un.org/press/en/2016/gacol3293.doc.htm> [https://perma.cc/2WXT-NHBR].

¹⁴⁰ See *Information from Non-Self-Governing Territories*, supra note 136, ¶¶ 1, 5.

¹⁴¹ Press Release, supra note 139.

for higher visibility and pressure to reform the relationship between the United States and Puerto Rico.

Falling within the remit of the Special Committee on Decolonization would bring other benefits too. It would allow the Committee to invite representatives from Puerto Rico to its annual regional seminar, linking local activists with a global network of experts and technocrats. It would also empower the Committee to “facilitate[] Territory-specific decolonization processes under way” and to organize fact-finding missions to the territory under review.¹⁴²

Beyond providing repeat access to a high-profile forum, however, the resumption of 73(e) reporting would generate embarrassment.¹⁴³ The United States presents itself as a postcolonial power,¹⁴⁴ and the recognition of a domestic American colony like Puerto Rico would have consequences for the deployment of American moral authority globally, especially at a moment when the United States’s world image has become increasingly fragile. International reputational capital is significant in a number of ways, affecting cooperation on matters like the “extradition of criminals [and] the allocation of troops for a military intervention”¹⁴⁵ and impacting the ability to form and direct moral coalitions.¹⁴⁶ While the precise influence of reputation on compliance and cooperation is heavily contested within the academic literature, “[d]iscussions of reputation in international law seem to be in universal agreement that states want a ‘cooperative’ reputation.”¹⁴⁷

The United Nations’ list of Non-Self-Governing Territories already includes U.S. possessions — namely, the United States Virgin Islands, American Samoa, and Guam.¹⁴⁸ But Puerto Rico is unique in its size — it has a population of approximately three and a half million peo-

¹⁴² UNITED NATIONS DEP’T OF PUB. INFO., WHAT THE UN CAN DO TO ASSIST NON-SELF-GOVERNING TERRITORIES 14 (2016), <http://www.un.org/en/decolonization/pdf/What%20the%20UN%20can%20do.pdf> [<https://perma.cc/VM2X-YWK8>]; see also Hector, *supra* note 4, at 134–36 (noting that, though the Special Committee can only suggest courses of action that can be and have been ignored, “the Special Committee has been the force behind many laudable political advances over the past decade,” *id.* at 136).

¹⁴³ Cf. *Igartúa-De La Rosa v. United States*, 417 F.3d 145, 151 (1st Cir. 2005) (en banc) (rejecting a claim under the International Covenant on Civil and Political Rights in part because a declared violation of a treaty obligation could “embarrass the United States in the conduct of its foreign affairs” and “could be trumpeted as propaganda in international bodies and elsewhere”).

¹⁴⁴ See sources cited *supra* note 45.

¹⁴⁵ Christopher J. Borgen, *Hearts and Minds and Laws: Legal Compliance and Diplomatic Persuasion*, 50 S. TEX. L. REV. 769, 784 (2009).

¹⁴⁶ See Harold Hongju Koh, *Paying “Decent Respect” to World Opinion on the Death Penalty*, 35 U.C. DAVIS L. REV. 1085, 1108 (2002).

¹⁴⁷ Rachel Brewster, *Unpacking the State’s Reputation*, 50 HARV. INT’L L.J. 231, 262 (2009); see also *id.* at 262–63 (discussing the ambiguity underlying notions of “cooperativeness”).

¹⁴⁸ *Non-Self-Governing Territories*, UNITED NATIONS, <http://www.un.org/en/decolonization/nonselfgovterritories.shtml> [<https://perma.cc/U2TD-3CQ7>].

ple,¹⁴⁹ in addition to the over five million Puerto Ricans who reside on the mainland¹⁵⁰ — and in its sheer distinctiveness, both of which would make its reincorporation into the list particularly notable. The U.N. factors, after all, incorporate consideration of the “[e]xtent to which the populations are of different race, language or religion or have a distinct cultural heritage . . . distinguishing them from the peoples of the country with which they freely associate themselves.”¹⁵¹ Uniquely among the territories, Puerto Rico operates in a working language other than English,¹⁵² with one Census survey finding that 95.3% of Puerto Ricans speak a language other than English at home, amongst which 81.2% speak English less fluently than “very well.”¹⁵³ These indicators would make recognition of Puerto Rico’s relationship as colonial especially discomfiting, though that hardly forecloses making similar critiques on behalf of places like Guam or American Samoa as well.

There is instructive precedent for relisting dependent jurisdictions without the dominant power’s consent. When French Polynesia was added again in 2013, the French Ambassador to the United Nations boycotted the General Assembly, and the French Ministry of Foreign Affairs decried the decision as “a flagrant interference.”¹⁵⁴ But for French Polynesia, reinscription brought with it annual scrutiny by the Special Committee on Decolonization and opened other venues for international attention. New Caledonia, for example, successfully campaigned to be readded to the list in 1986, and later invited the Special Committee to host its regional seminar on decolonization in its capital in 2010.¹⁵⁵ At the time, French Polynesia, which had yet to be re-recognized as non-self-governing, had its would-be representative to

¹⁴⁹ Nick Timiraos, *Puerto Rico’s Drastic Population Loss Deepens Its Economic Crisis*, WALL STREET J. (June 29, 2016, 7:35 PM), <https://www.wsj.com/articles/puerto-ricos-drastic-population-loss-deepens-its-economic-crisis-1467219467> [<https://perma.cc/J7JA-PZMB>].

¹⁵⁰ Gustavo López & Eileen Patten, *Hispanics of Puerto Rican Origin in the United States, 2013: Statistical Profile*, PEW RES. CTR. (Sept. 15, 2015), <http://www.pewhispanic.org/2015/09/15/hispanics-of-puerto-rican-origin-in-the-united-states-2013> [<https://perma.cc/8TCC-YVTC>].

¹⁵¹ G.A. Res. 742 (VIII), *supra* note 15, annex sec. II.A.5, at 22; *see also* Franck, *supra* note 6, at 57 (“Under Principle IV of [Resolution 1541], non-self-governing status exists *prima facie* ‘in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it.’” (quoting G.A. Res. 1541 (XV), *supra* note 21, annex princ. IV, at 29)).

¹⁵² Andrea Freeman, *Linguistic Colonialism: Law, Independence, and Language Rights in Puerto Rico*, 20 TEMP. POL. & C.R. L. REV. 179, 184–86 (2010).

¹⁵³ *Id.* at 185–86.

¹⁵⁴ Nic Maclellan, “*Hijacking Decolonisation*”: *French Polynesia at the United Nations*, INSIDE STORY (May 31, 2013), <http://insidestory.org.au/hijacking-decolonisation-french-polynesia-at-the-united-nations> [<https://perma.cc/64M9-N6PG>].

¹⁵⁵ *Id.*

the meeting refused entry.¹⁵⁶ Even if U.N. attention “does little to change the reality on the ground,”¹⁵⁷ access to an international forum can provide leverage with which to negotiate the terms of a constitutional referendum (which New Caledonia may hold before 2019).¹⁵⁸ In addition, under international law, representations made in such fora can later bind the dominant power.¹⁵⁹

Lastly, reinscription could be impactful in the same way that countries’ decisions to join international human rights instruments can be impactful, especially in transitional regimes. Professor Beth Simmons has argued that, in moments of political transition, treaty ratification increases the “political and legal resources stakeholders can bring to bear in . . . realiz[ing] treaty rights,” leading to improved outcomes.¹⁶⁰ Applied to Puerto Rico’s case, this theory would predict that even a symbolic change, like being redesignated as a Non-Self-Governing Territory, might embolden pro-democracy activists and re-energize the local conversation around Puerto Rico’s future. Access to the Special Committee, then, is a politically and normatively valuable goal.¹⁶¹

2. *Ultimate Responsibility for the Debt.* — Recognizing Puerto Rico as a Non-Self-Governing Territory may also have implications for its debt. In particular, Puerto Rico’s debt may qualify as odious, a designation that would give the island’s government reason to contest the enforceability of the debt in the first place.

The doctrine of odious debt, appropriately enough, is traditionally dated to the United States’ refusal to assume the debts of territories gained after the Spanish-American War — territories that included Puerto Rico, Cuba, the Philippines, and Guam.¹⁶² Spain argued that “the United States would only become responsible for debts that were lawfully contracted by Spain as the legitimate sovereign of Cuba, and only for those debts that either benefited Cuba or were . . . local.”¹⁶³

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *See id.*

¹⁵⁹ Lawson & Sloane, *supra* note 14, at 1155 (“It is well established that a State may, by repeated, public representations intended to induce reliance on the part of other States . . . bind itself unilaterally.”).

¹⁶⁰ BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* 357 (2009).

¹⁶¹ Indeed, Puerto Rico petitioned the Committee to consider its status as recently as June 2016. Press Release, Special Comm. on Decolonization, Gen. Assembly, 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/3296 (June 20, 2016), <https://www.un.org/press/en/2016/gacol3296.doc.htm> [<https://perma.cc/3PUG-C2SD>]. At the hearings, former Governor García Padilla urged the Committee that “Puerto Rico’s current humanitarian crisis . . . creat[ed] a grave situation of life or death for the Territory’s people.” *Id.*

¹⁶² *See* Bannan, *supra* note 137, at 290.

¹⁶³ Sarah Ludington et al., *Applied Legal History: Demystifying the Doctrine of Odious Debts*, 11 *THEORETICAL INQUIRIES* L. 247, 253 (2010).

The episode was influential on Professor Alexander Sack, who formally articulated a basis for odious debt in 1927.¹⁶⁴ The doctrine continues to evolve, with scholars arguing that it incorporates notions of sovereignty,¹⁶⁵ development and democracy,¹⁶⁶ and human rights.¹⁶⁷

There is at least a colorable argument that Puerto Rico's debts do not benefit the population and that creditors like hedge funds knowingly engaged in precarious lending in the years following the beginning of Puerto Rico's economic crisis in 2005.¹⁶⁸ The argument grows stronger if one accepts the potential relevance of the ongoing human rights crisis on the island and the claim that the island's colonial status has worsened its debt.¹⁶⁹ Even the conceivable applicability of odious-debt doctrine — a doctrine usually contemplated in the context of transitional justice and dictatorial regimes¹⁷⁰ — should give readers pause.

Additionally, while Puerto Rico's general obligation bonds remain guaranteed by the Puerto Rican Constitution's explicit debt-repayment clause,¹⁷¹ if Puerto Rico were recognized as non-self-governing and under Congress's plenary powers,¹⁷² an argument could be made that Congress itself should be liable for the island's massive public debt.¹⁷³

¹⁶⁴ Patrick Bolton & David Skeel, *Odious Debts or Odious Regimes?*, 70 LAW & CONTEMP. PROBS. 83, 83 (2007) ("Sack's tripartite definition quickly became the foundation of odious debt analysis . . ."). Sack posited that debts were not enforceable when "(1) they were incurred without the consent of the populace, (2) they did not benefit the populace, and (3) the lender knew or should have known about the absence of consent and benefit." *Id.*

¹⁶⁵ See, e.g., Odette Lienau, *Who Is the "Sovereign" in Sovereign Debt?: Reinterpreting a Rule-of-Law Framework from the Early Twentieth Century*, 33 YALE J. INT'L L. 63 (2008).

¹⁶⁶ See, e.g., Tom Ginsburg & Thomas S. Ulen, *Odious Debt, Odious Credit, Economic Development, and Democratization*, 70 LAW & CONTEMP. PROBS. 115 (2007).

¹⁶⁷ E.g., Christiana Ochoa, *From Odious Debt to Odious Finance: Avoiding the Externalities of a Functional Odious Debt Doctrine*, 49 HARV. INT'L L.J. 109, 145–46 (2008).

¹⁶⁸ See Bannan, *supra* note 137, at 298–300.

¹⁶⁹ See *id.* at 298–99, 304–06.

¹⁷⁰ See Ginsburg & Ulen, *supra* note 166, at 115–16.

¹⁷¹ P.R. CONST. art. VI, § 8.

¹⁷² For example, despite the Court's limiting language, *Puerto Rico v. Sanchez Valle* could be extended to cover the proposition that Puerto Rico remains under Congress's plenary powers under the Territorial Clause, U.S. CONST. art. IV, § 3, cl. 2, especially given other parts of the decision characterizing Public Law 600 as failing to evidence a break in the origins of political authority. See *Puerto Rico v. Sanchez Valle*, 136 S. Ct. 1863, 1874–77 (2016).

¹⁷³ A former Puerto Rico governor has made this argument already. Aníbal Acevedo Vilá, *Puerto Rico Crisis Can Only Be Solved when Congress Accepts Its Plenary Responsibility*, THE HILL (Feb. 24, 2016, 7:00 AM), <http://thehill.com/blogs/congress-blog/economy-budget/270433-puerto-rico-crisis-can-only-be-solved-when-congress> [https://perma.cc/WL5G-LB5E] ("[W]ith plenary powers comes plenary responsibility."). He partly rests his case on *Limtiaco v. Camacho*, 549 U.S. 483 (2007), in which Justice Thomas wrote that, where a federal provision "protect[ed] . . . the United States from the potential consequences of territorial insolvency," such law was "not a matter of purely local concern." *Id.* at 491–92.

3. *New Pressure on the United States Through Treaties.* — Lastly, reinscription may have implications for a number of international treaties that the United States has signed or ratified, as well as for other international obligations. For example, the International Covenant on Civil and Political Rights¹⁷⁴ (ICCPR) and the International Covenant on Economic, Social and Cultural Rights¹⁷⁵ (ICESCR) contain identical self-determination provisions, calling upon “State[] Parties . . . , including those [responsible] for the administration of Non-Self-Governing . . . Territories . . . [to] promote the realization of the right of self-determination.”¹⁷⁶ Similarly, the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples exhorts that “[i]mmediate steps shall be taken, in . . . Non-Self-Governing Territories . . . , to transfer all powers to the peoples of those territories.”¹⁷⁷

While the argument that the administration of the death penalty is illegal under international law is far from conclusive,¹⁷⁸ there may be reason to believe that the U.S.-driven implementation of the death penalty in Puerto Rico contravenes the ICCPR, and so that it is an especially egregious imposition of power. The ICCPR, to which the United States is a signatory,¹⁷⁹ includes the right to a fair trial in capital punishment cases, which the United Nations Human Rights Committee has interpreted to require “translation or interpretation into one’s own language.”¹⁸⁰ Uniquely among federal jurisdictions, however, federal law requires that federal trials in Puerto Rico be conducted in English,¹⁸¹ a language spoken fluently by only a distinct minority of Puerto Ricans.¹⁸² The language issue has also arisen in the context of the Sixth Amendment jury right, with at least one academic concluding that “the state of linguistic colonialism presently existing between

¹⁷⁴ *Adopted* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

¹⁷⁵ *Adopted* Dec. 16, 1966, 993 U.N.T.S. 3.

¹⁷⁶ *Id.* art. 1, ¶ 3; ICCPR, *supra* note 174, art. 1, ¶ 3.

¹⁷⁷ G.A. Res. 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples, ¶ 5 (Dec. 14, 1960). Professor Humberto García Muñiz also singles out this excerpt for building much of the case for continuing U.N. attention to Puerto Rico’s status. Muñiz, *supra* note 9, at 65.

¹⁷⁸ See, e.g., Laurence E. Rothenberg, *International Law, U.S. Sovereignty, and the Death Penalty*, 35 GEO. J. INT’L L. 547 (2004).

¹⁷⁹ See *id.* at 549.

¹⁸⁰ INT’L BAR ASS’N, THE DEATH PENALTY UNDER INTERNATIONAL LAW 5 (2008), http://www.ibanet.org/Human_Rights_Institute/About_the_HRI/HRI_Activities/death_penalty_resolution.aspx [https://perma.cc/U8N2-EPBX].

¹⁸¹ PR. FED. DIST. CT. R. 43 (“All proceedings . . . shall be conducted in the English language.”).

¹⁸² Freeman, *supra* note 152, at 185–86. The use of English in federal court has also raised concerns about domestic due process violations. See Luis Muñiz-Argüelles, *The Status of Languages in Puerto Rico*, in *LANGUE ET DROIT* 457, 469 (Paul Pupier & José Woehrling eds., 1989).

the United States and the Commonwealth of Puerto Rico is legally and morally untenable.”¹⁸³ If the death penalty were forcibly reintroduced to Puerto Rico through federal courthouses, then, an argument exists that the use of English would represent a violation of international standards for procedural fairness in capital punishment proceedings, at least as set forth in the ICCPR.

Even if direct enforcement of a number of treaties were not possible because they are not self-executing,¹⁸⁴ their content provides a potentially powerful rhetorical device that can be parlayed at the Special Committee and then at the General Assembly. Additionally, treaty content may be considered evidence of an emerging norm of customary international law, which may have “independent and binding juridical status.”¹⁸⁵ Judge Torruella’s spirited dissent in *Igartúa-De La Rosa v. United States*¹⁸⁶ provides one model for how customary international law might be incorporated into domestic jurisprudence.¹⁸⁷ Thus, acknowledgment of Puerto Rico as non-self-governing could enhance its political and legal leverage as it grapples for political autonomy.

D. Conclusion

This Chapter has attempted to rebuild the case for determining that Puerto Rico has been and remains a Non-Self-Governing Territory under U.N. criteria. In doing so, it has revisited historical debates and attempted to show that Puerto Rico is even further from true self-governance today than it was in 1953. Acknowledging the reality of Puerto Rico’s current political status would bring meaningful consequences in several ways. It would open a legitimate path for the island’s decolonization by providing improved access to international legal fora, and may influence the way the United States handles Puerto Rico’s public debts and its own international obligations. It would also, however, enable a frank conversation about Puerto Rico’s place in the American political order, and remind us of the role that international law may yet play in shining a light on territorial holdings in the twenty-first century.

¹⁸³ Freeman, *supra* note 152, at 181.

¹⁸⁴ See *Medellin v. Texas*, 552 U.S. 491, 505–06 (2008).

¹⁸⁵ *Igartúa-De La Rosa v. United States*, 417 F.3d 145, 176 (1st Cir. 2005) (en banc) (Torruella, J., dissenting).

¹⁸⁶ 417 F.3d 145. The litigation in *Igartúa-De La Rosa*, which challenges Puerto Ricans’ inability to vote in federal elections, has led to at least five appeals to the First Circuit. See *Igartúa v. Obama*, 842 F.3d 149, 151 (1st Cir. 2016).

¹⁸⁷ *Igartúa-De La Rosa*, 417 F.3d at 180–81 (Torruella, J., dissenting) (concluding that a declaratory judgment acknowledging a violation of international law “is substantially likely . . . [to] result in some form of relief,” *id.* at 180, for the United States is “a country of laws in which the norm is for all branches of government to respect and comply with the decisions of the courts,” *id.* at 181).