The following article appeared in *Orbis: A Journal of World Affairs*, Volume 45, Number 3, Summer 2001, as part of a debate between Christina Duffy Burnett and Alvin Rubinstein entitled "What's to Become of Puerto Rico?" Professor Rubinstein's article, entitled "The Case against Puerto Rican Statehood," appeared in the same issue. Professor Burnett's article is reproduced here with one minor correction to footnote 2.

Island in Limbo

The Case for Puerto Rican Decolonization

by Christina D. Burnett

Would Puerto Rican statehood create an American Quebec? Statehood opponents would have you think so. In an opinion piece published shortly before the island's most recent referendum on its political future, in December 1998, English Language Advocates founder Gerda Bikales urged voters to cast their ballots against statehood, warning that "America will not accept into its fold a new political entity with all the characteristics of a foreign nation."[1] Opponents of statehood who share some version of her concern range from the right-wing group Fortress America (whose literature asserts that "Puerto Rican Statehood is about the corruption of our American way of life," and that statehood would spawn "a full-fledged terrorist war inside the United States of America") to the more mainstream American Conservative Union (which fears that Puerto Rican statehood would lead to the permanent loss of "America's cultural identity," along with "mammoth new tax increases") to Puerto Rico's own *independentistas*, nationalists, and "autonomists" (who regularly declare that Puerto Rican statehood would create an American Quebec).[2]

These Cassandras across the anti-statehood spectrum have correctly identified the United States' single most important stake in the future of Puerto Rico: to avoid creating an enclave of culturally separatist U.S. citizens within the United States. However, they have pinned their fears on the wrong status—though whether out of ignorance or for strategic reasons depends on who makes the mistake. Puerto Rican statehood does not threaten to create a so-called American Quebec. Nor, obviously, does Puerto Rican independence. It is Puerto Rico's current relationship to the United States—the island's "commonwealth status"—that poses this risk. Indeed, commonwealth status not only threatens to produce such a problem, but to a significant extent already has.

Under the current arrangement, Puerto Rico's 3.8 million people, who are U.S. citizens by birth, are subject to American sovereignty but denied

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[1] Quoted in Michelle Faul, "Puerto Rico Voices Its Feelings Sunday," *Chattanooga Times*, Dec. 12, 1998.

[2] J. R. Wheeler, Fortress America letter (undated), on file with author, pp. 1-2. Chairman David Keane, American Conservative Union letter (undated), on file with author, pp. 3, 2. See also Rubén Berríos Martínez, "Puerto Rico's Decolonization," *Foreign Affairs*, Nov./Dec. 1997, pp. 100-14.

representation in the federal government. They cannot vote in presidential elections or elect senators or congressmen; a single, nonvoting "resident commissioner" is their voice in the House of Representatives.[3] This unresolved colonial status has bred a politics of ambivalence on the island. On the one hand, a 103-year-old relationship with the United States has fostered strong ties to the mainland and a powerful attachment to U.S. citizenship along with a profound dependence on federal largesse. At the same time, the disenfranchisement of the people of Puerto Rico and the island's subordinate position within the American system have nurtured a defiant streak of cultural pseudo-separatism and rhetorical nationalism—having nothing to do with a desire for actual separation, but thriving nevertheless in Puerto Rico's social, cultural, and political spheres. The United States' failure to set in motion a process of decolonization for Puerto Rico has fostered this ambivalence: today, over 95 percent of Puerto Rico's voters place the utmost priority on "permanent" union with the United States and "guaranteed" U.S. citizenship, yet only about 50 percent support statehood outright.

What do these figures mean? Why would one desire permanent union with the United States and guaranteed U.S. citizenship, but not statehood? What does the other 50 percent of the electorate propose instead? As these figures suggest, less than five percent of these voters hope to achieve independence. The rest style themselves supporters of the status quo, otherwise known as "commonwealth status." Their leaders, however, have no intention of merely maintaining the current arrangement. Rather, they have worked for decades to "enhance" Puerto Rico's political status, insisting on modifications such as: the implementation of a "mutually binding bilateral compact" between Puerto Rico and the United States with guaranteed U.S. citizenship for persons born in Puerto Rico; a simultaneous recognition of Puerto Rico's status as a "nation"; the reservation of sovereign powers for the local government, including the power to enter into treaties with other nations and to veto federal laws; and perpetual federal funding (maintaining current levels of $14 billion per year and adjusting for inflation), along with a continued exemption from federal income taxes.[4] In other words, proponents of "enhanced commonwealth" status hope to establish in Puerto Rico precisely what they threaten statehood would create: an enclave of culturally separatist U.S. citizens within the United States—an American Quebec.

Critics dismiss enhanced commonwealth as misguided and unconstitutional; its supporters call it "the best of both worlds" (the "worlds" being, one assumes, statehood and independence). The U.S. Congress seems to

[3] See *Rules of the House of Representatives, 107th Congress*, Rule 3 (prepared by Jeff Trandahl, Clerk of the House of Representatives, Jan. 3, 2001). On the limited voting rights for delegates from the District of Columbia and the territories, see also *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, 105th Congress* (Washington, D.C.: U.S. Government Printing Office, 1997), Rule 12, sec. 740, p. 541; Rule 13(c), sec. 864b, p. 708; *Michel v. Anderson*, 14 F.3d 623 (D.C. Cir. 1994); and Abraham Holtzman, "Empire and Representation: The U.S. Congress," *Legislative Studies Quarterly*, vol. 11 (1986), p. 249.

[4] See "Proposal for the Development of Commonwealth Status," adopted by the Governing Board of Puerto Rico's Popular Democratic Party (PDP), Oct. 15, 1998 (on file with author), discussed in detail below.

agree with the critics, and for fifty years has ignored these proposals, even though enhanced commonwealth has twice prevailed in referenda on the island.[5] Yet the key to avoiding an American Quebec lies not in silence. It lies instead in affirmatively ruling out this option and offering the electorate a valid process of self-determination with realistic status alternatives that would end Puerto Rico's colonial dilemma. As long as Congress fails to take a clear stand on Puerto Rican decolonization, some local political leaders will continue to promise the people of Puerto Rico that they can both be a nation and secure permanent union with the United States and guaranteed U.S. citizenship (not to mention a continued flow of federal funds and exemption from federal taxes). Put simply, federal silence on the future of Puerto Rico actually *increases* the desire on the island for something very much like an American Quebec. Rather than perpetuate this situation by inaction, American lawmakers would be wise to promote clear, noncolonial status options for Puerto Rico. Commonwealth status fails this test as it stands, and in its various optative guises.

A Century in the Making

Puerto Rico has been a colony for more than five centuries, and a U.S. colony since July 25, 1898, when American troops landed on the island "bearing the banner of freedom."[6] The United States was in the process of routing Spain in the Spanish-American War, and by year's end Spain would be forced to cede Puerto Rico, along with the Philippines and Guam, in the Treaty of Paris, which formally ended the conflict.[7] But reality did not live up to the Americans' rhetoric of freedom: the U.S. government intended to govern Puerto Rico as a colony and was disinclined to consider the possibility of the island's eventual admission into the Union as a state.

Not long thereafter, the Supreme Court gave constitutional sanction to the government's imperialist plans. In the *Insular Cases* of 1901, the Court addressed the controversial question of whether the United States could acquire and govern colonies without committing either to admit them into statehood or to grant them

[5] On referenda and unsuccessful efforts to "enhance" commonwealth status, see José Trías Monge, *Puerto Rico: The Trials of the Oldest Colony in the World* (New Haven, Conn.: Yale University Press, 1997), pp. 119-35; and Raymond Carr, *Puerto Rico: A Colonial Experiment* (New York: Vintage Books/Twentieth Century Fund, 1984), pp. 72-104, 124-29.

[6] Maj. Gen. Nelson A. Miles, "To the Inhabitants of Puerto Rico" (proclamation), quoted in Kal Wagenheim and Olga Jiménez de Wagenheim, *The Puerto Ricans: A Documentary History* (Princeton, N.J.: Marcus Wiener Publishers, [1994] 1996), p. 95.

[7] *Treaty of Peace between the United States and the Kingdom of Spain*, *U.S. Statutes at Large* 30 (1899), p. 1754. See generally Robert L. Beisner, *Twelve against Empire: The Anti-Imperialists, 1898-1900* (Chicago: Imprint Publications, [1962] 1994); David F. Trask, *The War with Spain in 1898* (New York: Macmillan Publishing Co., 1981); Luis E. González Vales, ed., *1898: Enfoques y perspectivas* (San Juan, P.R.: Academia Puertorriqueña de la Historia, 1997).

independence.[8] A bitterly divided Court concluded that it could, holding that the former Spanish colonies *belonged* to the United States but were not a *part* of it. In the memorable phrase used by Justice Edward Douglass White in a concurring opinion, the new territories were "foreign to the United States in a domestic sense."[9]

The Court reasoned that the "Territory Clause" of the Constitution conferred upon Congress nearly absolute, or "plenary," power to govern the territories.[10] In this, the former Spanish colonies were no different from the territories the United States had acquired, governed, and eventually admitted into statehood throughout the nineteenth century.[11] However, the Court distinguished the new territories from their nineteenth-century counterparts by explaining that the islands had not yet been "incorporated" into the United States, and that Congress had unfettered discretion over whether, if ever, to incorporate a territory.

The consequences of what became known as "unincorporated" territorial status were twofold. First, the residents of these new territories enjoyed even fewer constitutional protections than had the inhabitants of earlier, "incorporated" territories. For instance, the Sixth Amendment's guarantee of a right to a criminal trial by jury did not apply to the former Spanish colonies, though it had applied in the territories acquired prior to 1898.[12] Secondly, in contrast to earlier territories, the new ones were not considered to be on a path toward statehood and might never be. Whereas the Court had traditionally justified Congress's so-called plenary power over territories on the ground that territorial status was a transitional stage leading toward full and equal membership in the Union, now Congress would exercise colonial governance for its own sake.[13]

Thus, the *Insular Cases* left the status of the new territories unresolved and, in the case of both Puerto Rico and Guam, it remains so. Although Congress has taken some fitful action over the past century to modify and revise the status of

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[8] The *Insular Cases* consist of a series of Supreme Court decisions handed down between 1901 and 1922. The leading case, *Downes v. Bidwell*, 182 U.S. 244 (1901), contains the most detailed explanation of the Court's holding regarding the status of the new territories, set forth in Justice Edward Douglass White's concurrence, which was eventually endorsed by a unanimous Supreme Court in *Balzac v. Porto Rico*, 258 U.S. 298 (1922). See generally Christina Duffy Burnett and Burke Marshall, eds., *Foreign in a Domestic Sense: Puerto Rico, American Expansion, and the Constitution* (Durham, N.C.: Duke University Press, June 2001).

[9] *Downes v. Bidwell*, 182 U.S. 341-42 (White, J., concurring).

[10] "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or Property belonging to the United States." U.S. Constitution, art. 4, sec. 3, cl. 2.

[11] See generally Arnold H. Leibowitz, *Defining Status: A Comprehensive Analysis to United States Territorial Relations* (Dordrecht, The Netherlands: Martinus Nijhoff Publishers, 1989), pp. 3-16; Henry Wolf Biklé, "The Constitutional Power of Congress over the Territory of the United States," *American Law Register*, vol. 49 (supp.) (1901), p. v.

[12] See *Balzac v. Porto Rico*, 258 U.S. 298.

[13] See, e.g., *McAllister v. United States*, 141 U.S. 174, p. 187 (1891) (justifying lack of tenure of territorial judges on the ground that territorial status was temporary); *Pollard's Lessee v. Hogan*, 44 U.S. 212, p. 223 (1845) (discussing "temporary territorial governments"); *Loughborough v. Blake*, 18 U.S. (5 Wheat.) 317, p. 323 (1820) (explaining that territories are in a "state of infancy advancing to manhood, looking forward to complete equality").

these territories, it has never set in motion a process of self-determination leading to their full decolonization.

In 1917, Congress granted U.S. citizenship to Puerto Ricans and permitted popular election of representatives to both houses of the island's local legislature.[14] Any doubt as to whether this grant of citizenship implied "incorporation" was resolved shortly thereafter in another Supreme Court opinion, *Balzac v. Porto Rico*: it did not. As the Court explained, "Had Congress intended to take the important step of changing the treaty status of Porto Rico by incorporating it into the Union, it is reasonable to suppose that it would have done so by the plain declaration, and would not have left it to mere inference."[15] Three decades later, in 1948, the populist Luis Muñoz Marín, founder of the Popular Democratic Party (PDP, also known as the Commonwealth Party), became Puerto Rico's first elected governor. Muñoz Marín led the transition to commonwealth status between 1950 and 1952, in a process authorized by Congress and subject to its approval.[16] This transition inaugurated a new regime with a local constitution and a republican form of government like that of any state of the Union. However, Puerto Rico still lacked voting representation at the federal level. Moreover, it still had not been "incorporated" into the United States. Thus, whether the new commonwealth status had changed Puerto Rico's fundamentally colonial relationship to the United States remained the subject of intense disagreement.

Commonwealth supporters argued, and still do, that in 1952 Congress made a substantial and irrevocable delegation of sovereignty to Puerto Rico, thereby purging the relationship of its principal colonial attribute, namely, the plenary power of Congress.[17] For their part, advocates of statehood and independence disagreed with this theory, and still do.[18] The Territory Clause makes a constitutional grant of power to Congress, they reason, which Congress cannot permanently legislate away. It may delegate powers of local self-government to Puerto Rico, but Congress's underlying constitutional power remains in place. In this view, the only way to decolonize Puerto Rico would thus be to admit Puerto Rico into the Union, grant it independence, or amend the Constitution.

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[14] See "An act to provide a civil government for Porto Rico and for other purposes (Jones Act)," *U.S. Statutes at Large*, vol. 39 (1917), p. 951. See generally José A. Cabranes, *Citizenship and the American Empire: Notes on the Legislative History of the United States Citizenship of Puerto Ricans* (New Haven, Conn.: Yale University Press, 1979).

[15] 258 U.S. 302.

[16] See Trías Monge, *Puerto Rico*, pp. 107-18.

[17] See, e.g., José Trías Monge, "Plenary Power and the Principle of Liberty: An Alternative View of the Political Condition of Puerto Rico," *Revista Jurídica Universidad de Puerto Rico*, vol. 68 (1999), p. 1; Arnold H. Leibowitz, "The Applicability of Federal Law to the Commonwealth of Puerto Rico," *Georgetown Law Journal*, vol. 56 (1967), p. 219; Rafael Hernández Colón, "The Commonwealth of Puerto Rico: Territory or State?" *Revista del Colegio de Abogados de Puerto Rico*, vol. 19 (1959), p. 207.

[18] See, e.g., Juan R. Torruella, *The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal* (San Juan, P.R.: Editorial Universitaria, 1985); Carlos R. Soltero, "Is Puerto Rico a 'Sovereign' for Purposes of the Dual Sovereignty Exception to the Double Jeopardy Clause?" *Revista Jurídica Universidad de Puerto Rico*, vol. 28 (1994), p. 183.

This debate rages on, eliciting little more than mixed signals from the relevant congressional committees, courts, and other federal actors. The closest Congress has come to a clear statement on the issue was the United States-Puerto Rico Political Status Act, also known as the Young Bill after its principal sponsor, Representative Don Young (R-Alaska). That bill adopted the position that enhanced commonwealth was not a constitutional or desirable status, and called for a decolonization process offering statehood, separate sovereignty, and the (unenhanced) status quo as alternatives. It passed in the House on March 4, 1998, but later died in the Senate.[19] For its part, the Supreme Court has described Puerto Rico's status as "sovereign over matters not ruled by the Constitution" (making it seem statelike), but has cited the Territory Clause and the *Insular Cases* to uphold Congress's differential treatment of Puerto Rico in various contexts (not statelike at all).[20]

While recognizing the constitutional questions that afflict commonwealth status—and bemoaning the continued lack of representation that plagues the arrangement—the pro-commonwealth PDP leadership has repeatedly sought to persuade Congress to implement "enhancements" to the status quo, beginning with an agreement that expressly acknowledges the existence of the elusive mutually binding bilateral compact.[21] Congress has demurred. Meanwhile, supporters of statehood and independence continue to call upon Congress to make clear that no such compact does or can exist, and thereby to set Puerto Rico on a realistic path toward decolonization. Congress has not done this, either, but it should.

Rhetorical Nationalism and Cultural Pseudo-Separatism

Taking its cue from Justice White's description of the unincorporated territories as "foreign to the United States in a domestic sense," Congress has treated Puerto Rico sometimes as part of the United States, and at other times as a foreign country. Predictably, a good number of Puerto Ricans have reciprocated in kind: they unhesitatingly assert their status as a "nation" and insist all the while on permanent union with the United States and guaranteed U.S. citizenship. This brand of nationalism is best described as purely rhetorical. Although references to the "Puerto Rican nation" are ubiquitous in island politics, a precious few Puerto Ricans desire the independent nationhood one ordinarily associates with

[19] See *United States-Puerto Rico Political Status Act, Report together with Additional Views [To accompany H.R. 856]*, Rept. 105-131, Part I, 105th Cong., 1st sess., June 12, 1997; see also *United States-Puerto Rico Political Status Act, Report together with Dissenting and Additional Views [To accompany H.R. 3024]*, Rept. 104-713, Part I, 104th Cong., 2nd sess., July 26, 1996.

[20] For references to Puerto Rico's sovereign status, see, for example, *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, pp. 672-73 (1974). For citations of the Territory Clause and *Insular Cases*, see *Harris v. Rosario*, 446 U.S. 651-52 (1980) (per curiam); *Califano v. Gautier Torres*, 432 U.S. 1, p. 3 n.1 (1978) (per curiam).

[21] See Trías Monge, *Puerto Rico*, pp. 119-35; Carr, *Colonial Experiment*, pp. 72-104, 124-49; Robert J. Hunter, "Historical Survey of the Puerto Rico Status Question, 1898-1965," in *Status of Puerto Rico: Selected Background Studies Prepared for the United States-Puerto Rico Commission on the Status of Puerto Rico* (Washington, D.C.: U.S. Government Printing Office, 1966).

nationalism.[22] Indeed, despite recent events that fanned the flames of this renewed rhetorical nationalism—foremost among them the ongoing controversy over the U.S. Navy's use of the island-municipality of Vieques for live-fire target practice—the Puerto Rican Independence Party (PIP) once again barely eked out four percent of the vote in the November 2000 general elections.

Puerto Rico's rhetorical nationalism thrives instead in the late Muñoz Marín's pro-commonwealth PDP. In a striking instance of the conundrums engendered by the party's ambivalent politics, in 1991 the PDP-controlled legislature enacted a Spanish-only law replacing a ninety-eight-year-old statute that made English and Spanish Puerto Rico's official languages.[23] Defending the new law, then-governor Rafael Hernández Colón, a leading proponent of enhanced commonwealth, published an open letter in the *New York Times* declaring that "[s]o as we reaffirm our Spanish language and culture today, we also reaffirm our unity with the United States."[24] The law tried to make the rhetoric a reality, but the public balked: in 1992, Pedro Rosselló of the pro-statehood New Progressive Party (NPP) campaigned on a promise to make repeal of this law his first act in office. He won, and kept his promise.[25] Eight years later, the PDP recaptured the governorship and both houses of the legislature. The current governor, Sila Calderón, had promised to reenact the law but, despite strong pressure from both the PIP and hardliners in her own party, has thus far put it off.

In light of the Commonwealth Party's pseudo-separatist double-talk, how is it that Puerto Rican *statehood* came to be associated with the specter of Quebec? One reason may be that outside of Puerto Rico, virtually no one has any idea that the "pro-commonwealth" leadership does not, in fact, support the commonwealth status quo, or that this leadership intends to secure for Puerto Rico a level of autonomy that most Americans thought went out of style with John Calhoun's concurrent majorities.[26] Aware that their proposals face serious constitutional obstacles, advocates of enhanced commonwealth in turn have worked steadily, though unsuccessfully, in Congress to implement some of the more feasible features of their envisioned arrangement while endeavoring at the same time to

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[22] See generally Ramón Grosfoguel, Frances Negrón-Muntaner, and Chloé S. Georas, "Beyond Nationalist and Colonialist Discourses: The *Jaiba* Politics of the Puerto Rican Ethno-Nation," in *Puerto Rican Jam: Essays on Culture and Politics*, ed. Ramón Grosfoguel and Frances Negrón-Muntaner (Minneapolis: University of Minnesota Press, 1997).

[23] See Law No. 4 of Apr. 5, 1991, 1 P.R. Laws Ann. sec. 56 (Supp. 1993), repealing Law of Feb. 21, 1902, 1 P.R. Laws Ann. sec. 51.

[24] Rafael Hernández Colón, "An Open Letter to Fellow Citizens of the United States from the Governor of Puerto Rico," *New York Times*, Apr. 9, 1991, quoted in Amílcar A. Barreto, *Language, Elites, and the State: Nationalism in Puerto Rico and Quebec* (Westport, Conn.: Praeger, 1998), p. 122.

[25] Act No. 1 of Jan. 28, 1993.

[26] See generally Marshall L. DeRosa, *The Confederate Constitution of 1861: An Inquiry into American Constitutionalism* (Columbia: University of Missouri Press, 1991), pp. 25-39.

persuade Congress to set up various commissions to work out the details.[27] These attempts at enhancement so far have fallen on deaf ears.

In the meantime, the supporters of this arrangement have a vested interest in undermining their greatest rivals by promoting the misconception that statehood would create an American Quebec. Unfortunately, statehood opponents in the United States have accepted this position uncritically. If instead they took a closer look at the PDP's proposals, they would discover that the implementation of enhanced commonwealth entails precisely what they believe statehood threatens to create: *an enclave of culturally separatist U.S. citizens in permanent union with the United States.*

Two sources in particular shed light on the true nature of enhanced commonwealth: Governor Calderón's most detailed campaign statement on the issue of status, delivered in a speech on Puerto Rico's Constitution Day, July 25, 2000, and the "Proposal for the Development of Commonwealth Status" (the "Proposal," or "PDP Proposal"), adopted by the governing board of the PDP in October 1998.[28]

In her campaign speech, then-gubernatorial candidate Calderón set forth the five principles that, in her view, form the cornerstone of enhanced commonwealth status:

> (1) The recognition and reaffirmation of the sovereignty of the people of Puerto Rico. . . .
>
> (2) [The recognition that] Puerto Rico is a nation with its own culture and language, which it wishes to conserve, protect and develop according to its particular uniqueness.
>
> (3) The unequivocal guarantee of the permanence and irrevocability of the union between the United States and Puerto Rico on the basis of common citizenship, common defense, common currency and a free [common] market.
>
> (4) The specific definition of the powers delegated to the United States. . . . All other powers must be reserved to Puerto Rico. . . .
>
> (5) The participation of the people of Puerto Rico in the powers exercised by the government of the United States, under the pact, in those issues that affect Puerto Rico, in a way proportionate to the scope of those powers.[29]

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[27] See Trías Monge, *Puerto Rico*, pp. 127-30.

[28] Both on file with author. The PDP Proposal was debated in the House Committee on Energy and Natural Resources (which has jurisdiction over Puerto Rico status issues) in the form of H.R. 4751, introduced by Rep. John Doolittle (R-Calif.). See H.R. 4751, 106th Cong., 2d sess. (June 26, 2000). This proposed bill directly translated some of the provisions in the PDP Proposal and summarized others. The PDP boycotted this hearing, both because Rep. Doolittle made no secret of his opposition to enhanced commonwealth and because, in the wake of five decades of unsuccessful efforts at enhancement in Congress, the PDP now takes the position that the enhancements must first be developed in a constitutional convention in Puerto Rico, and then presented to Congress.

[29] See Transcript (English translation), Calderón speech, July 25, 2000 (on file with author).

This list provides an excellent snapshot of the ambivalent politics that afflicts Puerto Rico's status debate. On the one hand, the status described here bears a striking resemblance to statehood. Four out of these five essential features of enhanced commonwealth could just as well describe the status of any state of the Union: sovereignty; permanent union with the United States along with "common" (that is, U.S.) citizenship, defense, currency, and free markets; a delegation of powers to the federal government and reservation of other powers to the state or the people; and participation in the exercise of federal law-making powers. One can easily find provisions in the U.S. Constitution and federal case law elaborating on each of these features of statehood.[30]

The second principle, however, poses a substantial obstacle to statehood: "Puerto Rico is a nation." By this, it is clear, Calderón does not mean an independent nation. She refers to a culture and language to be conserved, protected, and developed, but a review of the more detailed PDP Proposal demonstrates that she also means something more. By "nationhood," the PDP means an array of local powers ordinarily associated with independent sovereign nationhood (and denied the states of the Union), but which Puerto Rico would enjoy even as it maintained a "permanent and irrevocable union" with the United States.

The Proposal, like Calderón's principles, describes a relationship indistinguishable from statehood in most ways, but inconsistent with it in a few crucial respects. The similarities with statehood include the ever-elusive "mutually binding bilateral compact," described in the preamble as follows: "The people of Puerto Rico, in the exercise of their sovereignty, their natural right of self-government and their free will as the ultimate sources of power, herein reaffirm that Commonwealth status is an autonomous political body, neither a colony nor a territory, in permanent union with the United States of America, under an agreement that may not be set aside or altered unilaterally. . . ."[31] Echoing the states' delegation of sovereignty to the federal government and reservation of powers under the Tenth Amendment, Puerto Rico would delegate specific powers to the federal government and "retain powers not delegated to the United States."[32] These delegated powers would include those relating to defense matters, the currency, U.S. citizenship, Social Security, Medicare, unemployment insurance, banking and brokerage matters, the postal service, and social and educational aid programs for veterans and citizens (all powers that the United States already

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[30] See, e.g., *Texas v. White*, 74 U.S. (7 Wall.) 700 (1869) ("The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States."). In the U.S. Constitution, see amend. 10 (reserving to the states or the people those powers not delegated to the federal government); amend. 11 (barring suits by citizens of one state against citizens of another state; the Supreme Court has interpreted this amendment as a constitutional recognition of state sovereignty); art. 1, sec. 2-4 (describing the manner of choosing representatives and senators); and art. 2, sec. 1 (describing the manner of choosing the president).

[31] PDP Proposal, preamble, p. 2. The pages cited here refer to the official Spanish-language version of the Proposal. The translations into English are my own.

[32] Ibid., art. 3(A), p. 3.

exercises in Puerto Rico, as well as in the states).[33] Under the compact, Puerto Rico would, like any state of the Union, retain its local constitution, which contains a Bill of Rights similar to that of the federal Constitution. Persons born in Puerto Rico, like those born in states, would "continue being U.S. citizens by birthright and said citizenship [would] continue to be protected by the U.S. Constitution and by this Agreement and cannot be unilaterally revoked."[34]

On a more practical note, a provision analogous to the General Welfare Clause of the federal Constitution would require Puerto Rico and the United States to "establish areas of special cooperation with the purpose of guaranteeing the quality of life of Puerto Ricans and thus allowing them to continue nourishing themselves from the collective experience of the institutional and sectoral developments of both peoples."[35] The long list of areas of cooperation includes: drug traffic control, communications regulation, immigration, the environment, employer-employee relations, natural-disaster response, agriculture, medicine, pharmacology, criminal justice, and the development of the natural and social sciences and the humanities—again, all areas in which the U.S. and Puerto Rico currently cooperate, and would under statehood. In addition, the Proposal confirms that under the compact Puerto Rico would retain its symbols, flag, and hymn, and that the island would be able to enter into "cultural, educational, scientific, and sports agreements."[36] Although these provisions have a more nationalist flair, a state of Puerto Rico would, of course, also retain its symbols, flag, and hymn, and could enter into cultural, educational, scientific, and sports agreements, albeit of a limited scope.

In these aspects, the compact merely reinvents the wheel: Puerto Rico might as well join the "indestructible union of indestructible states."[37] But these provisions coexist, improbably, with those designed to confirm and secure the island's status as a "nation." A second preamble declares that "[t]his relationship guarantees the autonomous development of Puerto Rico based on the democratic precept of government by consent of the governed and in the recognition that Puerto Rico is a Nation with its own history, idiosyncrasy, culture, and Spanish language."[38] Article 1, entitled "Puerto Rican Identity," follows immediately thereafter, declaring (somewhat redundantly) that "Puerto Ricans have a shared history, culture, idiosyncrasy, and Spanish language that constitutes them as a nationality specific and distinct from that of any other nation."[39] Other provisions similarly imply varying degrees of inconsistency with statehood. Under the

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[33] Ibid., art. 3(B), p. 4.

[34] Ibid., art. 2(A), p. 3.

[35] Ibid., art. 7, p. 6.

[36] Ibid., art. 11, p. 7; art. 12, p. 8.

[37] *Texas v. White*, 74 U.S. 700.

[38] PDP Proposal, preamble, p. 2.

[39] Ibid., art. 1(A).

compact, Puerto Ricans would be Puerto Rican citizens as well as U.S. citizens. Whereas under the Fourteenth Amendment of the federal Constitution, persons born in the United States are citizens of the United States and of the state in which they reside, the proposed compact reserves full discretion over Puerto Rican citizenship to the local government.[40] For instance, this government could deny Puerto Rican citizenship to other U.S. citizens who established residency on the island, a power states do not have.

Moreover, while Puerto Rico's reservation of sovereignty under the proposed compact resembles that of the states, the Proposal contemplates the retention of additional powers broader than those the states enjoy under the Constitution. For instance, under the compact Puerto Rico would delegate only *limited* powers over foreign relations to the United States.[41] Puerto Rico, in turn, would exercise "control over international trade [and] the power to enter into trade and tax agreements, among others, consistent with the interests of both [the United States and Puerto Rico] in defense and security."[42] In addition, the Proposal vests jurisdiction in a United States District Court over matters arising under the federal Constitution and laws and "which are not contrary to the provisions of the Constitution of Puerto Rico."[43] This language suggests that the local constitution would have supremacy over the U.S. Constitution, even on matters of federal law. Accordingly, the Supreme Court of Puerto Rico would presumably exercise ultimate appellate jurisdiction over challenges to federal laws under the Puerto Rico Constitution, even hearing appeals from the U.S. Supreme Court in such cases—a practice wholly inconsistent with the jurisdictional scheme set forth in Article 3 of the federal Constitution.

Finally, under the compact Puerto Rico would retain the power to veto federal laws selectively and unilaterally. In the language of the Proposal, "The Constitutional Convention shall design and propose to the United States Government a mechanism for the specific, prospective consent to the application of legislation passed by the U.S. Congress after the adoption of the agreement."[44] In this respect, the envisioned arrangement diverges from statehood dramatically, for states, of course, may not nullify federal laws.[45]

The Commonwealth Party's insistence on retaining these particular sovereign prerogatives rests in part on the premise that such powers inhere in nationhood, that is, that because it is a "nation" of some sort, Puerto Rico deserves these powers. It bears noting, however, that in order to enter into a permanent

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[40] Ibid.

[41] Ibid., art. 3(B), p. 4; compare U.S. Constitution, art. 1, sec. 8, cl. 3 (describing Congress's power to regulate commerce with foreign nations); and art. 2, sec. 2, cl. 2 (describing the president's power to make treaties with the advice and consent of the Senate).

[42] PDP Proposal, art. 5(B), pp. 4-5.

[43] Ibid., art. 8, p. 6.

[44] Ibid. p. 8.

[45] U.S. Constitution, art. 6, cl. 2 (Supremacy Clause).

union with the United States, Puerto Rico would necessarily give up other arguably inherent qualities of nationhood, among them the right to self-determination itself (which implies the right to choose independence, thereby unilaterally altering the unalterable compact). In this sense, the Proposal arbitrarily draws the line where it does—rather than, for instance, opting for the level of sovereignty that states of the Union enjoy.

The Proposal may also seek to reserve such an array of powers because, although it calls for delegating a great deal of sovereign powers to the United States, it still deprives Puerto Ricans of voting representation in the federal government (as it must, since the Constitution confers full federal representation on states of the Union, not citizens per se).[46] Under the compact, Puerto Rico would keep its resident commissioner who, in addition to his current function as a nonvoting delegate in the House of Representatives, would take on the duty of representing Puerto Rico before the executive branch, apparently as an ambassador of sorts.[47] Even with this expanded role, however, the position falls far short of full representation at the federal level—hence the proposed power to nullify federal laws. The president of the PDP explains the reasoning behind the arrangement thus:

> The fact that we don't vote for the president of the United States and the members of Congress is what some people find off-putting [about commonwealth status]. I've always said that is a quid pro quo, in exchange for not voting for the president and the congressmen you don't pay taxes, you have more self-government, you have your own culture, your own identity and your own nationality. [W]e don't solve that by going to extremes and voting for statehood, but rather . . . by identifying other areas where the power should reside in Puerto Rico.[48]

Ultimately, the prevailing rationale behind the Proposal for enhanced commonwealth is that this arrangement provides the best way, short of independence, to "conserve, protect and develop" Puerto Rican history, culture, traditions, and language. Thus, the Commonwealth Party not only saturates its campaign rhetoric with appeals to Puerto Rican identity, or *puertorriqueñidad*, but also trades heavily on linking statehood directly to the demise of that identity. It follows, supposedly, that statehood would create an American Quebec, because the pressure of assimilation would merely intensify Puerto Rican anxieties over culture and language. Enhanced commonwealth would ostensibly not have the same deleterious effect, because it would provide for just the right amount of cultural protection in Puerto Rico and just the right level of association with the United States.

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[46] See *Gore v. Bush*, 121 S. Ct. 525, p. 529 (2000) (per curiam).

[47] U.S. Constitution, arts. 1 and 2.

[48] Philipe Schoene Roura, "Hard Knocks on Capitol Hill" (profile and interview of PDP President Aníbal Acevedo Vilá), *San Juan* magazine, May 1999, p. 67.

How persuasive is this reasoning? Is enhanced commonwealth really the answer to Puerto Rico's status dilemma? Far from it. To begin with, the arrangement faces effectively insurmountable political and constitutional obstacles. Politically speaking, it is hard to imagine that the American government and voters would accept an arrangement that bestowed on Puerto Rico benefits and prerogatives delegated by the states to the federal government and consequently denied to them. There is good evidence of this resistance in the last five decades of unsuccessful efforts to obtain congressional action on further enhancements, even after this option has prevailed in island referenda. Constitutionally, critics of enhanced commonwealth are on solid ground when they insist that the envisioned "permanence and irrevocability" clauses would require an amendment to the federal Constitution. Neither American nor international law provides any basis for preventing one party from terminating a sovereign-to-sovereign compact (indeed, international law *requires* that such compacts be terminable).[49] Other proposals that would require amendment to the Constitution include the supremacy of a local court over the U.S. Supreme Court, the delegation of "limited" foreign affairs powers to the federal government, and the guarantee of annual federal funding in the form of a block grant. Yet the PDP has consistently rejected the claim that their proposals require a constitutional amendment,[50] presumably because the party recognizes that the chances of passing such an amendment are slim to none.

Since, barring an amendment, enhanced commonwealth does not offer a viable decolonization alternative, this option simply prolongs the status problem by enabling local political leaders to continue making the hollow promise that Puerto Ricans can have "the best of both worlds." In addition, the presence of this option in the status debate simply perpetuates the conditions that feed Puerto Rican rhetorical nationalism and cultural pseudo-separatism, without correspondingly reducing Puerto Ricans' desire for permanent union with the United States. In sum, enhanced commonwealth, of which the Proposal is the boldest formulation to date, is a political and legal nonstarter and the source of the very problem the United States hopes to avoid.

Accordingly, what the U.S. government should be doing with respect to Puerto Rico is explaining why enhanced commonwealth is not a viable solution to the colonial problem—and, for the benefit of those who cannot yet reconcile Puerto Rican identity with equal U.S. citizenship, why statehood would not mean the death of Puerto Ricanness.

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[49] See, e.g., Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, [1990] 1992), p. 17 (explaining that an "essential attribute" of associated statehood is "the ability unilaterally to terminate the 'association' with another state"). See generally Ian Brownlie, *Principles of Public International Law*, 5th ed. (New York: Oxford University Press, 1998), pp. 620-27.

[50] See Trías Monge, *Puerto Rico*, chap. 14.

Statehood and Puerto Ricanness

The prediction that statehood would lead to an American Quebec comes in the form of blunt assertion as often as reasoned argument, and is obviously deployed as a scare tactic. Yet the analogy has proven effective in large part due to the ignorance and misinformation about Puerto Rico that prevail on the mainland.

Return to Gerda Bikales of English Language Advocates. "America will not accept into its fold a new political entity with all the characteristics of a foreign nation." With confidence, Bikales assures her readers that the United States would reject a Puerto Rican petition for statehood, and she assumes that they will understand that their "foreignness" supplies a self-evident ground for such rejection. But Bikales's statement, like other such warnings, inadvertently reveals—or, perhaps, consciously promotes—a fundamental misunderstanding of Puerto Rico's current relationship to the United States.

The false axiom underpinning this warning is that the United States has not *already* accepted Puerto Rico into its fold. In fact, the United States long ago effectively subsumed Puerto Rico into its sphere of sovereignty, declaring the island entirely devoid of its own sovereignty and absolutely subject to plenary congressional authority, even after Puerto Rico began to enjoy powers of local self-government delegated to it by Congress. As a practical matter, the federal presence on the island differs hardly at all from the federal presence in the states; if anything, it is more overwhelming. With few exceptions determined entirely by Congress at its discretion, federal laws apply on the island as they do elsewhere in the United States.[51] Federal agencies operate there. Federal courts do as well: Puerto Rico belongs in the First Circuit along with Maine, New Hampshire, Massachusetts, and Rhode Island, and cases originating in Puerto Rico follow precisely the same procedures as cases originating anywhere else in the United States, all the way to appellate review before the U.S. Supreme Court. A United States Attorney's office prosecutes cases there in precisely the same manner as in any of the states. Consistent with their U.S. citizenship, Puerto Ricans carry U.S. passports and travel freely throughout the states. On establishing residency in a state (which they can do in the same manner as any other U.S. citizen, without any special arrangement), they obtain full and equal rights. According to recent estimates, 3.1 million U.S. citizens of Puerto Rican descent already live in the United States. In short, it is difficult to imagine that the United States could accept Puerto Rico any further into its fold.

Yet opponents of statehood who insist that Puerto Ricans remain too "foreign" for acceptance into the Union rarely voice objection to the current arrangement. In their view, evidently, "foreignness" does not pose an obstacle to intimate association; it simply poses an obstacle to equality.

The same cannot in fairness be said of supporters of enhanced commonwealth status, who obviously do not accept Puerto Rico's current colonial

[51] See generally David M. Helfeld, "How Much of the United States Constitution and Statutes Are Applicable to the Commonwealth of Puerto Rico?" *Federal Rules Decisions*, vol. 110 (1986), p. 452.

condition. It is more accurate to say that their view implies the reverse: not that "foreignness" poses an obstacle to equality, but that equality poses an obstacle to "foreignness," as in cultural uniqueness and distinctness. The reversal is significant. To say that cultural identity poses an obstacle to equality is to suggest that citizens who do not fit into a cultural mold should be denied equality before the law—an idea rightly rejected under American constitutional law (in principle, if not yet in the territories). To say, on the other hand, that equality poses an obstacle to cultural identity is to suggest that the idea of equality itself, at least as it has evolved in American constitutionalism, is oppressive insofar as it demands a high degree of assimilation from culturally distinct groups. The former suggests that groups should somehow modify or erase their cultural identities; the latter implies that Americans should strive to bring their practice of equality closer to their idealized conception of it.

Nevertheless, the question remains whether the equality to be gained from statehood does indeed pose a threat to Puerto Rican identity and whether, as a result, statehood would indeed trigger more insistent Puerto Rican demands for special recognition, thereby proving its opponents right.

In order to arrive at an answer, one must assess to the extent possible what would be at risk were Puerto Rico to become a state. Although an exhaustive analysis of Puerto Rican identity is beyond the scope of this article, a recent study of the concept provides a useful starting point. The study, authored by cultural studies professor Nancy Morris, was based on a series of in-depth interviews with Puerto Rican political leaders and focus groups that included members of the various political parties' youth organizations and students at the University of Puerto Rico. Based on her findings, Morris compiled a list of the most common unprompted responses to the question of what constitutes "Puerto Ricanness":

> nation/nationality, three cultures (Taíno Indian, African, and Spanish), the mix of four cultures (including American), history, worldview, lifestyle, celebrations, traditions and customs, Spanish language, Puerto Rican dialect,[52] music, food, hospitality and generosity, religious values, Latin elements, Olympics/sports, Miss Universe, historical Puerto Rican, contemporary Puerto Rican, flag, anthem, pride[53]

Numerous items on Morris's list figure prominently in the political rhetoric of statehood opponents, but it is immediately obvious that the vast majority of them would in no way be jeopardized by statehood, even on the most draconian assessment of the level of assimilation that statehood might imply. It strains credulity to suggest that statehood would threaten Puerto Rico's history, lifestyle, celebrations, traditions, customs, the hospitable and generous nature of its people, or even its flag and its anthem, which (like those of the fifty states) would remain in place under statehood. More important, statehood would not threaten most of

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[52] Although Morris uses the term "dialect," Puerto Rican Spanish is not a distinct dialect. The term refers rather to traditional Puerto Rican terms or turns of phrase.

[53] Nancy Morris, *Puerto Rico: Culture, Politics, and Identity* (Westport, Conn.: Praeger, 1995), p. 71.

these features of Puerto Rican identity any more than does the current level of intercourse under commonwealth.

Four items on the list, however, stand out as potentially inconsistent with statehood: the familiar "nationhood" concept, the Spanish language, the Puerto Rican Olympic team (which competes as a separate national team), and participation as a separate nation in beauty pageants such as the Miss Universe competition. Of these, the latter two play an embarrassingly prominent role in a debate that is ultimately about the basic democratic rights of a people. Clearly it is the former two that warrant serious attention.

In Puerto Rico's status debate, the term *nationhood* refers sometimes to the formal or juridical concept of a sovereign and independent nation-state, and at other times to the informal concept applied to a people with a shared history, culture, language, and traditions. The PDP Proposal deploys the term in both senses, referring on the one hand to various characteristics of "Puerto Ricanness" and on the other to formal qualities of separate sovereignty such as the power to enter into treaties and to control immigration policy. Notably absent from Morris's list of unprompted responses, however, are the formal qualities of sovereignty. As Morris found, when one asks Puerto Ricans what constitutes Puerto Ricanness, they do not speak of the supremacy of the local constitution over its federal counterpart or the power of nullification; they speak of the music, the food, and the way of life.[54] In light of the persistently meager performance of independence at the polls, this should come as no surprise.

Of the four items singled out above, language occupies center stage in the debate over status. It also deserves the most serious attention, both in Puerto Rico and in the rest of the United States. From the Puerto Rican point of view, obvious concerns exist since Congress could, and probably would, impose English-language requirements on an entering state of Puerto Rico (as it could choose to do as a condition of Puerto Rico's remaining a commonwealth). Opponents of statehood regularly cite this fact in an attempt to equate Puerto Rican statehood with the eradication of Spanish on the island. They reject the contention of statehood supporters that Puerto Ricans can and should be a fully bilingual population, and that a properly crafted English-language policy would serve that goal rather than destroy Spanish. That argument, they say, is merely a ploy to camouflage the risks of statehood. But the effects of English-language requirements on the Spanish language in an entering state of Puerto Rico cannot be assessed in the abstract.[55] Rather, such policies would have to be assessed on their merits.

From the U.S. perspective, however, anxieties over the impact of language on Puerto Rican statehood have little to do with the survival of Spanish (although

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[54] See ibid., pp. 76-77. Of the interviewees Morris quotes on the topic of Puerto Rico as a nation, one (an independence supporter) mentions "sovereignty," while the rest speak of such things as culture, history, language, and customs.

[55] On language as the principal site of controversy in the status debate, see Frances Negrón-Muntaner, "Spanish Only Jamás But English Only Cuidado: Language and Nationalism in Contemporary Puerto Rico," in Grosfoguel and Negrón-Muntaner, eds., *Puerto Rican Jam.*

the rapid growth of the Hispanic population in the United States suggests that an entering state of Puerto Rico would not be alone in resisting excessive English-language requirements). Rather, these anxieties revolve around that familiar, if vague, fear: the specter of Quebec. The fact that a large majority of Puerto Ricans speak only or predominantly Spanish figures prominently in anti-statehood sentiment on the mainland.

The view that the prevalence of Spanish in Puerto Rico provides a sound basis upon which to resist Puerto Rican statehood is, in short, not very persuasive. Essentially, it suffers from the same flaw that assertions of Puerto Rican "foreignness" generally do: both overlook the inconvenient fact that the relationship to which language allegedly poses an obstacle already exists. In other words, one may reasonably have concerns about the problems of governing a population that speaks a different language from the majority of the citizenry, but the U.S. already governs Puerto Rico, and has done so for more than a century. As is the case with Puerto Rican "foreignness," it is not at all clear why the Spanish language is any more inconsistent with statehood than with the current level of association and the pervasive federal presence in Puerto Rico. Those who cite language as the reason to reject statehood do not explain why language poses no obstacle to the current exercise of federal sovereignty in Puerto Rico, or why, in light of that sovereignty, language should stand in the way of full legal equality for the U.S. citizens who live in Puerto Rico.

Ultimately, Puerto Rican statehood means full equality, not (further) assimilation. The principal consequences of statehood—voting rights, a corresponding obligation to pay federal income taxes, and the attainment of sovereignty on a par with the other states—would mark a deeply significant transformation, to be sure, but not because they would bring Puerto Rico and the United States closer in any nebulous cultural sense. Puerto Rico's cultural pseudo-separatists and their allies on the mainland try to suggest that a more profound inconsistency exists between statehood and Puerto Ricanness, but their claims do not withstand scrutiny. Statehood *is* inconsistent with the desire of a local governing elite to exercise special sovereign prerogatives, but such prerogatives have a tenuous relationship to the survival of Puerto Rican culture. Thus, statehood may pose a difficult choice for those members of the governing class who would like to see themselves as the spokespeople of a pseudo-national entity, but this hardly translates into an impossible choice between equal citizenship and cultural dignity, regardless of the protestations of the purveyors of rhetorical nationalism and their stateside bedfellows.

Viable Status Options Are the Only Solution

The status problem may look like Puerto Rico's problem. Mostly, it is. The destructive effects of colonialism have played out in Puerto Rico almost entirely unnoticed by the vast majority of Americans. Former governor Hernández Colón captures the experience when he writes that the status debate "divide[s] the people

[of Puerto Rico] and breeds unending conflict. . . . At least 75% of the voters align themselves with status options, as opposed to candidates, programs or solutions to pressing problems. It is as if breaking up the Union into 50 pieces, or redefining the states to cut their number in half, were the only dominant issues in every presidential election in the U.S."[56]

But Puerto Rico's status is not Puerto Rico's problem alone. If the United States truly wants to avoid an American Quebec, then it must resolve Puerto Rico's status problem rather than avoid it. The persistent inequality and uncertainty that characterize the current colonial condition perpetuate a set of conflicting desires that the United States should be anxious to discourage. Yet Congress continues to practice empire by deferral, thereby stoking Puerto Rico's frustrating mix of rhetorical nationalism, cultural pseudo-separatism, and intense commitment to permanent union and U.S. citizenship.

Congressional implementation of a process of self-determination offering viable status alternatives is the only way forward. Under internationally recognized standards of decolonization (and consistent with the current U.S. constitutional structure), three solutions exist for Puerto Rico's status dilemma: full integration as a state in the Union; full separation as an independent, sovereign entity; and free association.[57] The third option resembles enhanced commonwealth in that it involves a sovereign-to-sovereign agreement under which one entity delegates limited powers to another. But it differs from enhanced commonwealth in the crucial respect that free association does not mutually bind the parties, and requires that both parties be free to exercise their right of self-determination, that is, the right to terminate the agreement.[58]

A fourth option—amendment to the federal Constitution—could bind the parties together in a relationship other than statehood, including enhanced commonwealth. Although, as noted above, the advocates of enhanced commonwealth steadfastly reject the claim that an amendment would be required to implement their preferred status, any serious process of self-determination that includes the option must overcome this objection. No one, after all, would accept a definition of statehood that suggested that Puerto Rico could somehow become a state without congressional acquiescence; no one would accept a definition of independence that granted Puerto Rico two senators and six representatives. Similarly, no one should accept a definition of enhanced commonwealth that omits the basic constitutional prerequisite for its implementation.

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[56] Rafael Hernández Colón, *La nación de siglo a siglo y otros ensayos* (The nation from century to century and other essays) (Hato Rey, P.R.: Ramallo Bros. Printing, 1998), p. 230.

[57] See generally Antonio Cassesse, *The Self-Determination of Peoples: A Legal Reappraisal* (Cambridge, U.K.: Cambridge University Press, 1995), pp. 67-100; see also Howard Loomis Hills, "Compact of Free Association for Micronesia: Constitutional and International Issues," *International Lawyer*, vol. 18 (1984), p. 583 (discussing the implementation of self-determination in the U.S. constitutional context and consistent with international standards).

[58] See Hannum, *Autonomy*, p. 17.

That said, the United States has little, if any, interest in agreeing to such an option, even in its constitutional form. In its unconstitutional version, enhanced commonwealth encourages a rhetorical nationalism and cultural pseudo-separatism that are inconsistent with the American commitment to individual equality before the law. In its constitutional formulation, enhanced commonwealth simply does more of the same with constitutional sanction—it creates a de jure American Quebec. Ultimately, whether the U.S. should agree to offer such an option is a matter to be resolved as part of a process of decolonization—but first, the United States must set the process in motion.

The United States and Puerto Rico would both benefit greatly from resolving the fundamental problems of inequality and uncertainty that afflict their current relationship. This unresolved colonial condition has fostered Puerto Rico's damaging brand of ambivalent politics—a politics that mirrors the ambivalence characterizing U.S. policy toward Puerto Rico ever since Justice Edward Douglass White coined the phrase "foreign in a domestic sense."

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