

FORUM

The Puerto Rico Status Question: Can the Stalemate be Broken?

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The result of what has been said is that while in an international sense Porto Rico was not a foreign country, since it was owned by the United States, it was foreign to the United States in a domestic sense, because the island had not been incorporated into the United States but was merely appurtenant thereto as a possession.

Justice Edward Douglas White, U.S. Supreme Court, 1901¹

Finally, at the Heart of this Report and central to the lives of many Puerto Ricans, is the issue of the political status of Puerto Rico. I am firmly committed to the principle that the question of political status is a matter of self-determination the people of Puerto Rico... Both the President and Congress have roles to play to help Puerto Rico settle its future status; I am committed to working with Congress to ensure that a fair, clearly defined and transparent process is available for the people of Puerto Rico to decide on their future for themselves.

George W. Bush, *Report by The President's Task force on the Puerto Rico Status*, March 2011

Abstract: *In 1898, Puerto Rico became a possession of the United States. Since then the government of the Island evolved from military rule to a Free Associated State, also known as Commonwealth. In spite of changes, Puerto Rico remains a possession that belongs to but it is not a part of the United States. Because of this, since its creation in 1952, the Commonwealth status has been considered by large sectors in Puerto Rico and in the international community as a*

colonial status. Puerto Ricans are divided between three alternatives: a more autonomous Commonwealth; independence; or statehood—becoming a state of the Union. Four plebiscites on the status question have been held in 1967, 1993, 1998, and 2012 but, save for Commonwealth in 1967, no formula has emerged overwhelmingly favored. The 2012 plebiscite expressed dissatisfaction with Commonwealth by a vote of 54% against to 46% in favor. Unless Congress—that holds sovereignty over Puerto Rico—acts, the stalemate will continue.

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Since the United States' invasion of Puerto Rico on July 25, 1898, the Island experienced several changes in its political system from a military government to the current Estado Libre Asociado (Free Associated State), known in English as Commonwealth. Yet, as the above quotes—one hundred and ten years apart—reveal, the Island continues to be a possession of the United States: an unincorporated territory that belongs to, but it is not part of that nation. While the United States sought to present the creation of a 'Commonwealth' as an act of political self determination and was able to remove Puerto Rico from the United Nations' list of non-independent territories, the status question continues to be the key axis of Puerto Rican politics and U.S. - Puerto Rico relations.

This essay shall address three issues: why does the status question continue unresolved; what is the current status of the 'status question'; and finally, can the stalemate on this issue be surmounted?

A BRIEF HISTORICAL BACKGROUND

Puerto Rico became a colony of the United States as a result of the Spanish-Cuban-American War of 1898. Along with Puerto Rico, Cuba and the Philippines came under American sovereignty. From 1898 to 1900 Puerto Rico was ruled by a military government.

In 1900, with the passage of the Foraker Act (officially the Organic Act of 1900), Puerto Rico was afforded a civilian government. The U.S President appointed a civilian governor, all cabinet members and a Resident Commissioner to the U.S. Congress. An 11 member Executive Council was established. All members of the Council were appointed by the U.S. President: five

individuals were selected from Puerto Rico residents while the rest were from those in top cabinet positions, including the Island's attorney general and the chief of police. The Act provided for a House of Representatives with 35 members elected from the local political parties. A Judicial system with a Supreme Court was also established, with all judges appointed by the U.S. President. All federal laws of the United States were to be in effect on the Island and thus a United States (Federal) District Court was also established. Puerto Rican citizenship was created thus making Puerto Ricans 'foreign in a domestic sense.'

In 1917, the Jones Act provided a new legal framework to Puerto Rico U.S. - relations. American citizenship was granted to Puerto Ricans, an elected Senate was created and the Resident Commissioner would now be elected as well. The Act also provided a Bill of Rights and maintained the elected House of Representatives. As Puerto Ricans became U.S. citizens by statute, they could be conscripted into the U.S. armed forces but could not run for president, even if they resided in the United States.

No major changes to the Jones Act were made until 1946. With the creation of the United Nations and the imminent decolonization processes to dismantle the old empires after WWII, the United States President Harry S. Truman appointed the first Puerto Rican governor and later Congress passed a law allowing for the election of the Puerto Rican governor, which came in effect in 1948. Thus by 1948 the basis of the 'Commonwealth' status formula was in place: locally elected government with a republican form (three branches), U.S. citizenship and a bill of rights. Between 1950 and 1952 the U.S. Congress dealt with the Puerto Rican status question by enacting a new 'Federal Relations Act' (Public Law 600) that replaced the Jones Act, and providing for a process for Puerto Ricans to form a Constitutional Assembly in order to write a local constitution fashioned after, and subject to, the Constitution of the United States and the approval of Congress. After changes were made by the U.S. Congress, a referendum was held on March 3, 1952 and eighty-one percent of the electorate supported the creation of the *Estado Libre Asociado* and the new Constitution.

Much has been said about the fact that the Nationalist Party, which opposed Commonwealth as a 'colonial ploy' to free the United States from United Nations supervision on Puerto Rico, was repressed previous to the 1952 plebiscite. The fact of the matter is that many nationalist were imprisoned and a 'gauge law' was passed prohibiting seditious speech previous to the

Commonwealth plebiscite in 1952. The participation rate in this plebiscite was 54.7 per cent; the lowest in any status consultation. In 1953, the United States government informed the UN that Puerto Rico had exercised its right to self determination. Following the report, UN resolution 748 (VIII) recognized Puerto Rico as an autonomous, non dependent territory with self government and associated to the United States, thus removing the Island from the list of non-independent territories and exempting the United States from reporting on its status and affairs.

A special issue of *The Annals of the American Academy of Political and Social Science* was published in January 1953 to present and celebrate this new form of government as a showcase for democracy for the world's 'dependent areas'. The volume included contributions by major academic and political figures involved in the making of Commonwealth such as: Governor Luis Muñoz Marín, head of the Economic Development Administration Teodoro Moscoso, Economist John K. Galbraith and Harvard law professors Karl Friedrich and Rupert Emerson, among others.² In his article 'Puerto Rico and American Policy toward Dependent Areas' Emerson stated:

[T]he most distinctive element is that they [the Puerto Rican people] now have for the first time in their history given themselves a constitution and given their consent to their relationship to the United States (...) It is arguable that the status which they now have does not differ greatly in substance from that which they had before; but to press that argument too far would be to ignore the great symbolic effect of entering into a compact with the United States and governing themselves under an instrument of their own fashioning...

THE STALEMATE

Within seven years of the creation of Commonwealth, the very government that fashioned it was requesting 'cosmetic' changes to Law 600. In spite of all the maneuvers, the world and many Puerto Ricans continued to denounce the Island status as colonial. The Fernós-Murray Bill was introduced in Congress in 1959 to enact those cosmetic changes. This would be the first of over a dozen bills that throughout the years 'died' in Committee or were rejected by one of the chambers of Congress not making it to the next.

Since 1959 there have been three noteworthy initiatives in Washington to modify the Puerto Rico status. Two of these

initiatives came from the U.S. President and occurred in the context of major shifts on inter-American policy. The first came from the Kennedy Administration and was linked to the Alliance for Progress. The Alliance was a policy shift to counter the potential spread of socialist revolutions throughout Latin America. At a White House reception held on March 13, 1961 to announce the initiative to Latin American Diplomats and members of Congress Kennedy stated:

As a citizen of the United States, let me be the first to admit that we North Americans have not always grasped the significance of this common mission, just as it is also true that many in your own countries have not fully understood the urgency of the need to lift people from poverty and ignorance and despair. But we must turn from these mistakes—from the failures and the misunderstandings of the past—to a future full of peril but bright with hope.

[...]Therefore I have called on all the people of the hemisphere to join in a new Alliance for Progress - Alianza para [el] Progreso - a vast cooperative effort, unparalleled in magnitude and nobility of purpose, to satisfy the basic needs of the American people for homes, work and land, health and schools - *techo, trabajo y tierra, salud y escuela*.

[...]To achieve this goal political freedom must accompany material progress. Our Alliance for Progress is an alliance of free governments—and it must work to eliminate tyranny from a hemisphere in which it has no rightful place. Therefore let us express our special friendship to the people of Cuba and the Dominican Republic—and the hope they will soon rejoin the society of free men, uniting with us in our common effort.³

This event took place a month before the failed Bay of Pigs invasion, and a few years before the second American invasion of the Dominican Republic. The treaty creating the Alliance for Progress was signed in Punta del Este, Uruguay in August 1961. In November of that year, Teodoro Moscoso (the architect of Puerto Rico's Operation Bootstrap) was appointed coordinator of the Alliance and Regional Administrator for Latin America of the United States International Agency for Development (USAID). On December 1961, after breaking relations with Cuba, President Kennedy traveled to Latin America to promote the Alliance, visiting San Juan, Caracas and Colombia. Governor of Puerto Rico Luis Muñoz Marín was a key to Kennedy's new Latin American policy,

being part of what at the time was called 'the democratic left' in Latin America.

As a reward for the services of the Government of Puerto Rico in launching the Alliance, President Kennedy sent the following message to Governor Muñoz Marín for the celebration of the tenth anniversary of Commonwealth on July 25, 1962:⁴

The achievements of the Puerto Rican people in this short period have been remarkable. Puerto Rico has furnished an example to the world of the benefits that can be achieved by close collaboration between a larger and a smaller community within the framework of freedom and mutual agreement. I am confident that I speak for the people of the United States as well as their government in expressing my pride and pleasure at Puerto Rico's achievements.

I am aware, however, as you point out, that the Commonwealth relationship is not perfected and that it has not yet realized its full potential, and I welcome your statement that the people of Puerto Rico are about to begin the consideration of this with the purpose of moving towards its maximum development. I am in full sympathy with this aspiration. I see no reason why the Commonwealth concept, if that is the desire of the people of Puerto Rico, should not be fully developed as a permanent institution in its association with the United States. I agree that this is a proper time to recognize the need for growth and, both as a matter of fairness to all concerned and of establishing an unequivocal record, to consult the people of Puerto Rico, as you propose to do, so that they may express any other preference, including independence, if that should be their wish.⁵

After the assassination of President Kennedy, all hopes for a reform of Law 600 and the enhancement of the Commonwealth autonomy through Presidential and Congressional action were dampened. This eventually led to the 1967 plebiscite as a strategy of Commonwealth supporters, who had been in power since 1940, to put pressure for change on Washington. Yet, President Lyndon B. Johnson refused to meet with the Puerto Rico Secretary of State, who was to deliver personally the results of the plebiscite.⁶

The second major Washington initiative to resolve the Puerto Rico status question came from President George H.W. Bush in 1989. In the context of the Enterprise of the Americas Initiative which eventually became the Free Trade Areas of the Americas (FTAA) initiative. In his first State of the Union Address President Bush called on Congress to act on Puerto Rico's political future:

There's another issue that I've decided to mention here tonight. I've long believed that the people of Puerto Rico should have the right to determine their own political future. Personally, I strongly favor statehood. But I urge the Congress to take the necessary steps to allow the people to decide in a referendum.⁷

The President's request resulted in the introduction on April 4, 1989 of the 'Puerto Rico Status Referendum Act' (S. 712). As chair of the Senate Committee on Energy and Natural Resources, which is charged to deal with issues relating to the U.S. possessions, Senator Bennett Johnston held extensive hearings. For the first time since the enactment of Law 600 and the creation of Commonwealth, Congress embarked in a process of hearings and substantial deliberations on the Puerto Rico status question. The process was so inclusive that the leader of the Puerto Rican Independence Party expressed great satisfaction with the fact that Congress provided for the first time in history a viable and mutually agreeable definition of independence. Various books were later written about what was termed the process of negotiations and consultations of 1989-1990.⁸ In reality these were Congressional Hearings, but not accustomed to openness and exchange of views with members of Congress, the local politicians and pundits thought they had participated in 'consultations and negotiations.' They were promptly disabused as the bill was not approved in the 101st Congress. Reintroduced as in the Senate as S. 244 in the 102nd Congress, the bill 'failed to approve' in the Committee of Energy and Natural Resources, never making it to the Senate floor or the House.

The last noteworthy attempt to provide for a congressionally sanctioned solution to the Puerto Rico status question was the introduction of the 'United States-Puerto Rico Political Status Act' by Alaska Republican Don Young (H.R. 3024 in the 104th Congress and H.R. 856 in the 105th congress). Although the bill was passed in the House 209 to 208 votes; it was referred to the Senate (S. 472) and never made it to the Senate's floor.

THE 2012 PLEBISCITE: PROSPECTS FOR A SOLUTION?

The latest of the four status plebiscites sent two clear messages: (1) the majority of Puerto Ricans are dissatisfied with Commonwealth; (2) there is a growing number of Puerto Ricans —although still a minority—that favor a 'sovereign free associated state' or a more

autonomous Commonwealth. The ballot for this plebiscite was divided in two parts. On the first part voters were asked: Do you agree that Puerto Rico should continue to have its present form of territorial status? The results were 54 per cent ‘no’ and 46 per cent ‘yes’, a clear rejection of the current status. But when given three choices on the second part of the ballot, statehood, independence and sovereign free associated state (‘sovereign Commonwealth’), the results did not yield a clearly favored alternative. Table 1 summarizes the results of the four plebiscites and puts in perspective the difficulty of solving the status question.

Table 1 – Results of Puerto Rican Status Plebiscites

	Commonwealth	Statehood	Independence	Free Association	None/Blank	Turnout
1967	425,132	274,312	4,248	N/A	N/A	66.4%
Share	60.1%	38.8%	0.6%	-	-	
1993	826,326	788,296	75,620	N/A	N/A	73.5%
Share	48.6%	46.3%	4.4%	-	-	
1998	993	728,157	39,838	4,536	787,900	71.3%
Share	0.1%	46.5%	2.5%	0.3%	50.3%	
2012	N/A	834,191	74,895	454,768	498,604	76.7%
Share	-	44.4%	4%	24.2%	26.5%	

Source: Puerto Rico Electoral Commission

<http://www.ceepur.org/es-pr/Webmaster/Paginas/Eventos-Electorales.aspx>

Since 1967 the Commonwealth has consistently lost support. Although it got the majority vote in 1993 it failed to reach the 50

percent mark. The 1998 and 2012 plebiscites were organized and held under the pro statehood governments of the New Progressive Party (NPP). Pro Commonwealth leaders argue that the definitions crafted by the PNP legislature for that formula were distorted in order to favor statehood; hence, the ‘unfavorable’ results in the last two plebiscites for Commonwealth. In 1998, pro Commonwealth and pro independence voters formed a coalition that introduced the alternative ‘none of the above’ to the ballot, thus rejecting the maneuvers of the NPP government to tilt the vote in favor of statehood. The former proved to be the winning alternative, garnering 50.3 percent of the vote, thus sending the message to Congress that the Puerto Rican electorate was not sure of what it wanted but that it was not statehood, which got 46.5 percent of the vote.

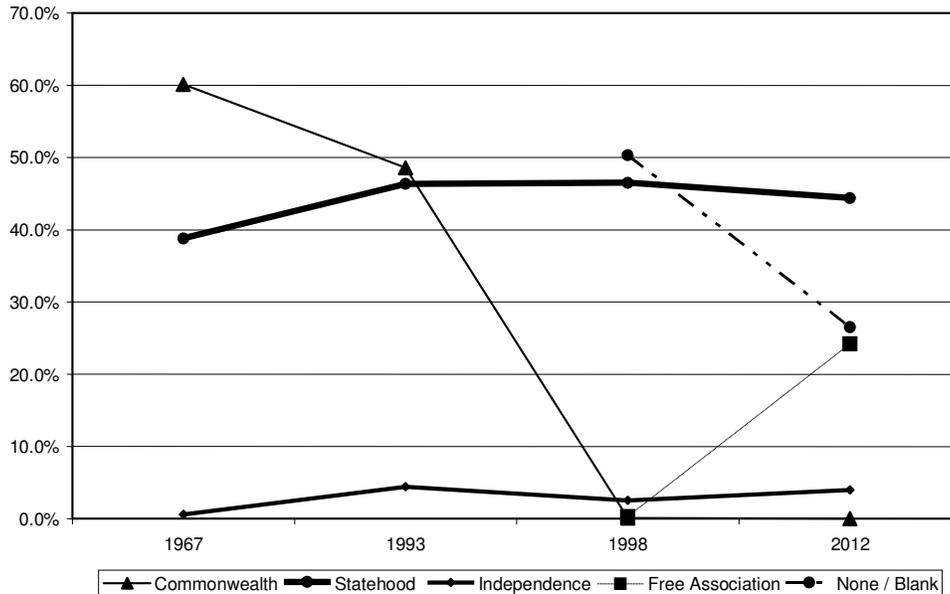
The 2012 plebiscite suffered from similar maneuvering. Arguing that Commonwealth was merely a territorial status, the ballot was split as we explained earlier. As the plebiscite was held on the same day of the general elections, the status campaign overlapped with that of the political parties vying for office. The leader of the pro Commonwealth Popular Democratic Party (PPD) thus asked its supporters to vote ‘yes’ on the first part of the ballot (supporting Commonwealth) and to leave blank the second part as a sign of protest. The results of the election were a victory for the PPD over the NPP. On the plebiscite, the current form of Commonwealth was rejected while statehood achieved a pyrrhic victory.

Although statehood got the most votes of any alternative on the second part of the ballot, 44.4 percent, the blank votes combined with the votes for ‘sovereign free associated state’ amounted to 50.7 percent. Moreover, the share of votes for statehood decreased by 2.1 percent from 1998. The pro statehood leadership argued to no avail that statehood had won by 61 percent, as the blank votes for the second part of the ballot should not be counted to certify the results. Yet, as these were ‘protest votes’, they became part of the calculations in spite of the protestations of the NPP leadership.

Figure 1 better illustrates the tendencies in the four plebiscites. There are two steady tendencies, one at the bottom of the chart, independence, and another at the top of the chart, statehood. Neither has grown much in the 46 years since the 1967 plebiscite. Statehood went from an initial 39 percent in 1967, to a high 46.5 percent in 1998, and down to 44.6 percent in 2012. Independence hovers at the bottom and has never reached the 5 percent mark. Commonwealth is clearly losing support, as the results of the first

part of the 2012 plebiscite demonstrate, but ‘sovereign Commonwealth’ seems to be on the rise, gathering 24.2 percent of the vote, up from 0.3 percent in 1998.

Figure 1 – Status Options Percentage Vote



In the absence of a clearly favored alternative, the U.S. Congress and President remained silent on the 2012 plebiscite. Finally, on April 2013 the White House announced the allocation of:

\$2,500,000 for objective, nonpartisan voter education about, and a plebiscite on, options that would resolve Puerto Rico’s future political status, which shall be provided to the State Elections Commission of Puerto Rico: Provided, that funds provided for the plebiscite under the previous proviso shall not be obligated until 45 days after the Attorney General notifies the Committees on Appropriations that he approves of an expenditure plan from the Commission for voter education and plebiscite administration, including approval of the plebiscite ballot; Provided further, that the notification shall include a finding that the voter education materials, plebiscite ballot, and related materials are not incompatible with the Constitution and laws and policies of the United States [sic].⁹

Following the President’s action, Puerto Rico’s Resident Commissioner to the House of Representatives and NPP leader, Pedro Pierluisi presented the bill HR 2000 the ‘Puerto Rico Status

Resolution Act', proposing a statehood 'yes' or 'no' plebiscite. After losing face with the claim that statehood 'won' the 2012 plebiscite with 61 percent of the vote, the statehood leader and new president of the NPP, seems to be willing to 'roll the dice' in an all or nothing gamble. As Puerto Rican Congressman José Serrano warned, if a vote for statehood is lost, this alternative will be sidetracked for at least a generation.

But given the fact that Congress has not acted on any of the more than a dozen status bills presented since 1952, this gamble may prove to be superfluous. Moreover, Republicans hold the majority in the House and they have traditionally opposed statehood for Puerto Rico because: (1) the Island is culturally a Latin American Spanish-speaking nation, merely 10 percent of the Puerto Ricans living on the Island are fully bilingual according to the 2010 U.S. Census; (2) the political allegiance of Puerto Ricans is to the Democratic Party, which would add two Senators and five or six Representatives for that party. To these reasons, new ones have been added: The government of Puerto Rico is nearly bankrupt; the Island's GDP has dropped over 10 percent in the past decade; unemployment was 16 percent in 2012; migration to the mainland is at a rate of 35,000 annually and the population dropped by 2 percent between the 2000 and 2010 population censuses. Some pundits argue that Puerto Rico would be a 'beggar state' and a burden to Federal finances at a time of fiscal duress.

It is reasonable to conclude that, with these measures, both President Obama and Resident Commissioner Pierluisi are simply posturing to satisfy political promises made to their constituents. It is unlikely that Congress will act on any of these two proposals, and the stalemate shall continue.

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NOTES ON CONTRIBUTOR

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Twenty First Century (Kingston, Jamaica: Ian Randle Publishers, 2009). His current research is on tourism and economic development in the Caribbean. He was also President of the Caribbean Studies Association in 2004-05. Email: epantojas@yahoo.com

NOTES

- ¹ Quoted in Christina Duffy Burnett and Burke Marshall (eds.), *Foreign in a Domestic Sense: Puerto Rico, American Expansion and the Constitution* (Durham, London: Duke University Press, 2001), 13.
- ² The volume concluded with the text of the Constitution of the Commonwealth of Puerto Rico, *The ANNALS of the American Academy of Political and Social Science January 1953*, 285. <http://ann.sagepub.com/content/285/1.toc>
- ³ *Modern History Sourcebook: 'President John F. Kennedy: On the Alliance for Progress'*, 1961. <http://www.fordham.edu/halsall/mod/1961kennedy-afp1.html> (Accessed May 16, 2013).
- ⁴ Note that the date of the creation of Commonwealth coincides with the day of the U.S. invasion of Puerto Rico, July 25. All dates quoted previously come from: *New York Times Chronology*, 1961. <http://www.jfklibrary.org/Research/Research-Aids/Ready-Reference/New-York-Times-Chronology/Browse-by-Date/New-York-Times-Chronology-December-1961.aspx> (Accessed May 16, 2013).
- ⁵ John F. Kennedy: 'Message to Governor Munoz Marin on the 10th Anniversary of the Commonwealth of Puerto Rico.' July 25, 1962. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=8787> (May 16, 2013).
- ⁶ Ángel Collado Schwarz, 'El mensaje a la metrópolis'. *El Nuevo Día*. 25 de Octubre de 2012. <http://www.elnuevodia.com/columna-elmensajealametropolis-1370349.html> (May 16, 2013).
- ⁷ George H.W. Bush, 'State of the Union Address,' February 9, 1989. <http://stateoftheunion.onetwothree.net/texts/19890209.html> (Accessed May 16, 2013).
- ⁸ Cf. Rubén Berríos-Martínez, *Nacionalidad y Plebiscito* (San Juan: Editorial Libertad, n.d.), 133; Juan M. García Passalacqua and Carlos Rivera Lugo, *Puerto Rico y los Estados Unidos: El Proceso De Consulta Y Negociación de 1989 y 1990* (San Juan: n.p., 1991), 2 Vols.
- ⁹ 'Puerto Rico Status Vote Proposed by White House', *The Huffington Post*. April 10, 2013. http://www.huffingtonpost.com/2013/04/10/puerto-rico-status-vote_n_3056579.html (Accessed May 16, 2013).