US Policy toward its Territories: A Complex and Perhaps Intractable Problem

José Javier Colón-Morera, *University of Puerto Rico*

An assessment of how the US territories relate to political science is an extraordinarily complex undertaking. Thinking about the territories in relation to the politics and government of the United States involves historical, geo-strategic, constitutional, military, economic, sociological, race and ethnic, normative, and international—both imperialist and nationalist—factors. All play a part in explaining a highly asymmetric political relationship.

The courses presented in this symposium are essential tools by which students and teachers of political science can uncover this complex and relatively invisible situation. The territories are, indeed, "foreign in a domestic sense" as the US Supreme Court ruled in the *Insular Cases*. How the current "non-incorporated" territories became so—and how they contrast with the earlier "incorporated" territories—are issues that these courses can explore. The fact that the US Supreme Court continues to actively adjudicate territorial controversies provides testimony on the importance in academic conversation.

As this symposium—titled "'Disembodied Shades': Teaching the Territories of the United States"—eloquently reveals, fundamental questions about the federal government's interactions with US territorial possessions are increasingly salient in the mid-2010s. These relationships have recently generated considerable attention in the US media and have been the subject of multiple legislative hearings, new legislation, and US Supreme Court decisions. This renewed focus reveals that the issues presented by the existence of US overseas territories are not questions of mere historical interest. As the contributors to this symposium elucidate, US territorial policy reflects "an uneven and incomplete democratization of the American polity" (Moore 2017) and raises present-day problems regarding how the Constitution applies to territorial governance as well as internationally (Silverstein 2017).

Sparrow provided a helpful and comprehensive starting point to clarify the territorial model of governance in the academic context. He stresses that, in reality, the United States is not a nation of states because it "has always included territories or possessions under its dominion.... Furthermore, the study of the US territories makes apparent the crucial distinction between the United States as a nation of states and as a 'state,' existing among other states, international institutions, and non-state actors" (Sparrow 2017). Consideration of these distinctions challenges us to revisit the "federalist" framework of American political science, whereby political problems are assumed to be entirely domestic in kind and the Constitution's uniform application is taken for granted.

Furthermore, understanding the evolution of territorial policy of this American state since the beginning of the republic remains a complex and elusive task (Moore 2017; Sparrow 2017). It encompasses political, historical, geo-strategic, constitutional, military, economic, sociological, racial and ethnical, normative, and international—both imperialist and nationalist—factors. As a result of this set of complex diverse elements and interests, US policy makers are pulled toward opposite and contradictory paths: between strong local self-government, on the one hand, and direct federal intervention on the other (Leibowitz 2014). Policies therefore may fluctuate between inclusion and exclusion in crucial issues such as citizenship, taxation, and political representation (Meléndez 2013; Rivera Ramos 2001a; Venator-Santiago 2017).

This article argues that Puerto Rico's debt crisis perfectly illustrates crucial problems regarding the territories that the symposium's contributors have raised: questions of political status and self-determination, US foreign policy and imperialism, territorial political economy, democratic representation, and ethnicity and citizenship. The controversies surrounding Puerto Rico—the most populous of the US territories with its (diminishing) population of 3.4 million residents—constitute a salient case in point. The acute economic and financial crisis underway in this Caribbean island—where the Puerto Rican government and its utilities had been on the verge of massively defaulting on $70 billion in debt—forced the Obama administration to pressure Congress into using its plenary powers under the Territorial Clause of the Constitution as a means to address this policy issue. As a result, a rare bipartisan agreement was achieved.

PROMESA

The resulting legislation, the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), established a powerful fiscal board to manage Puerto Rico's financial crisis (PROMESA 2016). With its passage, Puerto Rico's accumulated public debt—concentrated in the US municipal-bond market—finally found an institutional framework in which it potentially can be restructured or subject to bankruptcy proceedings.

Although passage of PROMESA arrested the evolving and dangerous financial crisis, the political consequence of

doi:10.1017/S1049096516003127
© American Political Science Association, 2017

https://doi.org/10.1017/S1049096516003127 Published online by Cambridge University Press

the new law weakened the relative autonomy of Puerto Rico as a "semi-sovereign" unit of the federal system (Wellhausen 2017). At the same time, the US Supreme Court held in *Commonwealth of Puerto Rico* v. *Sánchez Valle* 579 US ___ (2016) that Puerto Rico's Commonwealth is not sovereign for the purposes of the Double Jeopardy Clause of the Fifth Amendment. The ultimate source of political power in this instance is the US Congress: "[t]he oldest roots of Puerto Rico's power to prosecute lie in federal soil" (*Commonwealth of Puerto Rico* v. *Sánchez Valle* 2016). The Court held that Puerto Rico lacks the type of original separate sovereignty that the states of the Union have. Additionally, as Moore (2017) points out, "Puerto Rico's unique status as a Commonwealth…means that it cannot seek relief in a federal bankruptcy court but is also ineligible for aid or debt restructuring from the International Monetary Fund because it is not a sovereign nation." Many in Puerto Rico are angered by this extreme form of federal intervention in the island's internal affairs.

With PROMESA, the federal government occupies an even greater share of decision-making and oversight prerogatives with regard to Puerto Rico, where a high level of asymmetry in the US government's management of its overseas territories has become evident (Moore 2017). Puerto Rico's sole congressional representative, Resident Commissioner Pedro Pierluisi, was forced to rely on the White House and Treasury Department's heavy-handed lobbying in favor of this controversial bill (Pierluisi 2016). Without full legislative powers in Congress—as in other territorial (and DC) delegates (Lewallen 2017)—Pierluisi was handicapped in his ability to advocate in favor of solutions for Puerto Rico's debt crisis.

In short, the promise of self-government for Puerto Rico, according to the 1952 Commonwealth agreement, has faded. Instead, recent US Supreme Court decisions (i.e., *Commonwealth of Puerto Rico* v. *Sánchez Valle* [2016] and *Commonwealth of Puerto Rico* v. *Franklin California Tax-Free Trust* [2016]) and PROMESA reinforced the idea of Puerto Rico as a "quasicolony" (Moore 2017) with a locally elected government subject to ample external control on the part of the US Congress and federal courts (*Commonwealth of Puerto Rico* v. *Sánchez Valle* 2016; *Harris* v. *Rosario* 1980). This strong federal intervention in Puerto Rico is inextricably tied to the political-status question.

Puerto Rico's crisis has placed the peculiar form of territorial political economy—in some ways not unlike that of the American Indian tribes—on full display (Wellhausen 2017).

THE POLITICAL STATUS QUESTION

Because PROMESA likely will have an impact on the lives of Puerto Ricans for the next decade, the law has imbued the complex political-status issue, which is central to its political economy and its distinct political culture, with newfound immediacy—even though there is no clear indication that Congress will come to terms with the status issue any time soon (Colón-Morera 2016; Leibowitz 2014). It may be that the Executive Branch will need to assume leadership in these territorial matters by developing stronger institutional mechanisms. In any event, the future political status of the territories continues to be a key topic (Leibowitz 2014).

This article argues that Puerto Rico's debt crisis perfectly illustrates crucial problems regarding the territories that the symposium's contributors have raised: questions of political status and self-determination, US foreign policy and imperialism, territorial political economy, democratic representation, and ethnicity and citizenship.

What holds for Puerto Rico also applies, to varying degrees, to other US territories. Leibowitz (2014) observed, "at present, all of the territories seek a greater voice to determine their own future, both within their own political structure and *vis-à-vis* the US federal government. The latter relationship is complicated and efforts to change the relationship have been very difficult as the federal government always stalled, to maintain the status quo, or stalled because it was not sure what it wanted to do." Yet, neither policy makers in Puerto Rico or the other US territories nor members of Congress have a clear consensus or sense of direction regarding the territorial-status issue (Moore 2017; Trías Monge 1997).

Part of the problem may be that some American policy makers are embarrassed by the fact that the US government still exerts sovereignty over offshore territories that are being kept indefinitely as territories—with no promise of full membership in the federal government in sight—and lack full representation in the US government. In fact, several US possessions are regarded as non-self-governing territories under international law (United Nations 2016) and constitute part of an unfinished agenda of political self-determination (Rivera Ramos 2001b; Trías Monge 1997). "Even sophisticated students of American politics often are shocked to learn that the Constitution does not apply *ex propio vigore* to American overseas territories" (Moore 2017).

This is not to claim that the status debate is currently the overarching concern in the territories. Only 27 % of the US Virgin Islands electorate chose to vote on this issue when it arose, and 80% voted in favor of a continued or enhanced territorial status (Leibowitz 2014, 21). In American Samoa, conversely, an effort to preserve "land control and maintenance" has reached little success. The most consistent impetus for status change occurs in Puerto Rico, even more so given the current economic crisis (Leibowitz 2014). In Guam, the current US military buildup is generating new political tensions (Fifield 2016).

IMPERIAL CONSTRAINTS AND CITIZENSHIP

The current situation in Puerto Rico evokes another issue, that of the US "imperial ambition" (Harris 2017). The decision

https://doi.org/10.1017/S1049096517003127 Published online by Cambridge University Press

to annex territory "is one of the biggest foreign policy decisions that a country can make—even weightier, perhaps, than decisions of war and peace" (Harris 2017). The US government's policies of territorial expansion involved geo-strategic considerations geared toward promoting naval dominance.

This liminal status of Puerto Ricans is consistent with their previous classification as "foreign in a domestic sense" according to the US Supreme Court's decisions in the *Insular Cases* (Rivera Ramos 2015; Silverstein 2017; Sparrow 2006). Consistent with the territories' quasi-"foreign" status, the US

Part of the problem may be that some American policy makers are embarrassed by the fact that the US government still exerts sovereignty over offshore territories that are being kept indefinitely as territories—with no promise of full membership in the federal government in sight—and lack full representation in the US government.

With respect to Puerto Rico, in particular, military considerations were crucial in the US exercise of sovereignty and its goal of preventing Puerto Rico's independence (Trías Monge 1997). Similarly, regional security considerations during World War II reinforced the strategic value of the US territories (Rodríguez Beruff and Bolívar Fresneda 2012). These strategic factors likewise were evident in the cases of Guam, American Samoa, and the Commonwealth of the Northern Marianas.

Of further significance are the inconsistent histories of the territories regarding the extension of US citizenship; most Americans, in fact, do not realize that almost all territorial residents are US citizens (Venator-Santiago 2017). Puerto Rico and US Virgin Islands residents were made US citizens in 1917 and 1927, respectively, and American Samoans have been US nationals since 1900 (Venator-Santiago 2017). The current trend in federal courts is to grant Congress a great degree of discretion in determining the scope of US citizenship (*Rabang* v. *Immigration and Naturalization Service* 1994, cited in Leibowitz 2014). Nevertheless, there are important limits on the ability of Congress to revoke birthright citizenship without due process of law (Álvarez González 1990).

Despite the fact that Puerto Ricans became US citizens in 1917, they are denied the right to vote in federal elections and full membership in the American political community (*Balzac* v. *Porto Rico* 1922). However, if Puerto Ricans or other territorial citizens reside in any of the 50 states, they can become residents of that state—just as any other US citizen would—and thereby could enjoy full political participation rights in the federal government and their respective state government. Conversely, if US citizens move and become residents of Puerto Rico, they lose the right to vote in federal elections and their former state of residence. Given that the one million Puerto Ricans residing in Florida could decide the outcome of a presidential election, there seems to be little logic in bestowing such importance to the *location* of an American citizen. A major justification given by the US Supreme Court in 1922 to treat Puerto Ricans residing in the island differently was the express recognition of Puerto Rico and its inhabitants as a distinct, compact, national cultural community (*Balzac* v. *Porto Rico* 1922). The preservation of such a distinct cultural personality is a question of central contemporary importance for most Puerto Ricans.

Supreme Court in *Tuaua* v. *United States* recently refused to review the legal status of American Samoans as US "nationals,"[1] thereby validating the federal courts' tendency to leave decisions about the territories squarely in the hands of Congress (Rivera Ramos 2015; Savage 2016). It is important to note, however, that Samoans fear that the acquisition of US citizenship would disrupt the *matai* system that allows for communal control of the land (Leibowitz 2014, 13). Contrary to the claim by certain academic voices that the fair treatment of territories implies uniform rights (e.g., the granting of American citizenship to all territorial residents), the Samoan case forces consideration of an alternate legal-pluralist perspective (Griffiths 1986) and the need for a more flexible understanding of sovereignty (Aleinikoff 2002).

Puerto Rico's current debt crisis further provides political scientists and their students with a timely and important opportunity to see US territorial policy in the context of a "global color line" (Harris 2017). The study of US territorial policies with respect to the residents of these distinct cultural communities on the margins of the US political system—whether US citizens or nationals—highlights the role of racial hierarchy as a key component of US international conduct (Harris 2017).

FINAL COMMENTS

Focused consideration of these issues evoked by the Puerto Rican debt crisis is a productive means for scholars and students of American politics and government to understand and, ultimately, address this set of stubbornly complex problems. Consider, for example, the following questions and their pertinence to rather sensitive social and economic policy and human-rights issues: In which way did the *Insular Cases* alter the course of territorial policy? What are US current national interests *vis-à-vis* the few remaining populated US territories and their continued politically subordinate status? What type of racial or ethnic hierarchies were at play when these types of arrangements were designed and under which specific constitutional provisions (Venator-Santiago 2017)? Is it time to altogether reconsider the territorial arrangement?

I concur with Harris (2017) that there are few decisions as momentous for a democratic nation-state as the addition—or the divestment—of a territory. Educating ourselves about the consequences of such decisions is our vital responsibility.

https://doi.org/10.1017/S1049096516003127 Published online by Cambridge University Press

This is a field of study in US academia that should be open to the creation of new courses and publications in order to address the near invisibility of this topic.

Indeed, the passage of PROMESA, with its establishment of a powerful, seven-member fiscal board, may force these questions to the fore. When the new board addresses the short- and medium-term challenges of Puerto Rico's economy, it likely will be forced to look beyond the immediate context of the debt crisis in order to consider the status issue as well as the pros and cons of maintaining the current territorial model. Should new tax incentives be put in place under the territorial context to stabilize the status quo? Should parity in federal-funding programs be part of an overall growth-oriented strategy? Should the US government support a greater internationalization of Puerto Rico (Clar 2013)? These are economic questions with political significance and political issues with economic consequences. They present the need for both Puerto Rico and the US government to squarely face difficult and neglected political dilemmas.

A crisis, at its best, is an opportunity for change. Let us hope that the governments of Puerto Rico and the United States can take full advantage of this opportunity and forge a more mutually dignified and satisfying relationship. This symposium offers an opportunity to face these important political questions. ■

NOTE

1. A *national* is "a person, although not a US citizen, who owes permanent allegiance to the United States" (Leibowitz 2014, 14).

REFERENCES

Aleinikoff, Alexander T. 2002. *Semblances of Sovereignty: The Constitution, the State, and American Citizenship*. Cambridge, MA: Harvard University Press.

Álvarez González, José Julián. 1990. "The Empire Strikes Out: Congressional Ruminations on the Citizenship Status of Puerto Ricans." *Harvard Journal on Legislation* 27: 309.

Balzac v. *Porto Rico*, 258 US 298 (1922).

Clar, Juan. 2013. "Rethinking the Puerto Rican Commonwealth Model through a Lens of Internationalization." *The Fletcher Forum of International Affairs* 17 (3): 151–62.

Colón-Morera, José Javier. 2016. "Puerto Rico: A Case of Imperial Doubts." *University of Puerto Rico Law Journal* 85:883–96.

Commonwealth of Puerto Rico v. *Franklin California Tax-Free Trust*, 136 S. Ct. 1938, 579 US ___ (2016).

Commonwealth of Puerto Rico v. *Sánchez Valle*, 136 S. Ct. 1863, 579 US ___ (2016).

Fifield, Anna. 2016. "Some in Guam Push for Independence from US as Marines Prepare for Buildup." *Washington Post*, June 17. Available at www.washingtonpost.com/world/asia_pacific/some-in-guam-push-for-independence-from-us-as-marines-prepare-for-buildup/2016/06/16/e6152bd2-324b-11e6-ab9d-1da2b0f24f93_story.html.

Griffiths, John. 1986. "What Is Legal Pluralism?" *Journal of Legal Pluralism* 24: 1–55.

Harris, Peter. 2017. "Teaching the Territories in US Foreign Policy: Race and Empire in the American Experience." *PS: Political Science & Politics* 50 (2): this issue.

Harris v. *Rosario*, 446 US 651 (1980).

Leibowitz, Arnold. 2014. *Defining Status: A Modern Note*. San Bernardino, CA: Createspace Independent Publishing.

Lewallen, Jonathan. 2017. "From Rules to Representation: Teaching about the Territories and their Delegates in the US Congress." *PS: Political Science & Politics* 50 (2): this issue.

Meléndez, Edgardo. 2013. "Citizenship and the Alien Exclusion in the Insular Cases: Puerto Ricans in the Periphery of American Empire." *Centro Journal* 25 (1): 106–45.

Moore, Colin. 2017. "American Political Development: Expansion and Sovereignty beyond the States." *PS: Political & Politics* 50 (2): this issue.

Pierluisi, Pedro. 2016. "Press Release: Support for H.R. 5278, the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA)." July 13. Available at https://pierluisi.house.gov/media-center/press-releases/support-for-hr-5278-the-puerto-rico-oversight-management-and-economic.

Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA). 2016. Public Law 114–187, June 30.

Rabang v. *Immigration and Naturalization Service*, 35 F.3d 1449 (9th Circ.) (1994).

Rivera Ramos, Efrén. 2001a. "Deconstructing Colonialism: The 'Unincorporated Territory' as a Category of Domination." In *Foreign in a Domestic Sense: Puerto Rico, American Expansion, and the Constitution*, ed. Christina Burnett and Burke Marshall, 104–18. Durham, NC: Duke University Press.

———. 2001b. *The Legal Construction of Identity: The Judicial and Social Legacy of American Colonialism in Puerto Rico*. Washington, DC: American Psychological Association.

———. 2015. "The Insular Cases: What Is There to Reconsider?" In *Reconsidering the Insular Cases: The Past and Future of the American Empire*, ed. Gerald L. Neuman and Tomiko Brown Nagin, 29–39. Cambridge, MA: Harvard University Press.

Rodríguez Beruff, Jorge and José L. Bolívar Fresneda. 2012. *Puerto Rico en la Segunda Guerra Mundial: Baluarte del Caribe*. Río Piedras, PR: Ediciones Callejón Publisher.

Savage, David G. 2016. "Supreme Court Rejects Citizenship for American Samoans." *Los Angeles Times*, June 13. Available at www.latimes.com/nation/la-na-court-samoans-20160613-snap-story.html.

Silverstein, Gordon. 2017. "One Constitution, Indivisible? *The Insular Cases* and American Constitutional Interpretation." *PS: Political Science & Politics* 50 (2): this issue.

Sparrow, Bartholomew H. 2006. *The Insular Cases and the Emergence of American Empire*. Lawrence: University Press of Kansas.

———. 2017. "A Territorial State: Geographic Expansion, the US Territories, and an 'Introduction to American Politics'." *PS: Political Science & Politics* 50 (2): this issue.

Trías Monge, José. 1997. *Puerto Rico: The Trials of the Oldest Colony in the World*. New Haven, CT: Yale University Press.

Tuaua v. *United States*, 788 F.3d 300 (D.C. Cir. 2015), cert. denied, 579 US ___ (2016).

United Nations. 2016. "Non-Self-Governing Territories." Available at www.un.org/en/decolonization/nonselfgovterritories.shtml.

Venator-Santiago, Charles R. 2017. "United States Territorial Citizenship Today: Four Interpretations." *PS: Political Science & Politics* 50 (2): this issue.

Wellhausen, Rachel L. 2017. "The Political Economy of US Territories and 'Indian Country'." *PS: Political Science & Politics* 50 (2): this issue.

https://doi.org/10.1017/S1049096517003127 Published online by Cambridge University Press