

# **Puerto Rico's Future A Time to Decide**

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**Foreword by George H.W. Bush**

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to vindicate the civil rights of the nearly 4 million U.S. citizens residing in Puerto Rico and thereby ensure that the United States honored international commitments to human rights and self-determination made in undertakings such as the International Covenant on Civil and Political Rights. But dissenting opinions do not carry the day—at least for now leaving it to Congress to reconcile the status of Puerto Rico with historical and constitutional norms for administration of U.S. territories.

The pressure on Congress ratcheted up late last year when the White House released the long-awaited and broadly welcomed “Report by the President’s Task Force on Puerto Rico’s Status.” This document urged Congress to take steps toward the resolution of Puerto Rico’s political status by sponsoring a series of referenda in Puerto Rico that would allow voters to express a preference—whether Puerto Rico should continue as a territory under federal law or seek a new nonterritory status. Only if a majority voted to end territory status would there be a vote between the nonterritory status options recognized by Congress. The White House report identifies statehood and independence as the nonterritorial options historically and currently recognized under federal law. The President’s Task Force report crystallized the important choices facing Congress and the residents of Puerto Rico, calling for determination of the political status of the last large and populous U.S. territory consistent with the principle of government by consent of the governed. The response of Congress to the task force’s recommendations will also have implications for the relationship between the United States and its other remaining territories.

The historical and legal analysis of federal territorial law and policy is set forth here to inform the public and Congress of the importance of these issues to the national interest and to promote a productive civic discourse about the past, present, and future of U.S. territorial administration.

## **THE IMPORTANCE OF RESOLVING THE POLITICAL STATUS OF PUERTO RICO**

Although the residents of Puerto Rico adopted a local constitution in 1952, whereby Puerto Rico designated itself a “commonwealth,” and although persons born in Puerto Rico have been granted U.S. citizenship by federal statute, Puerto Rico’s legal and constitutional status has not changed: it remains an unincorporated territory of the United States,

subject to the control of Congress, with a form of limited self-government, defined by federal statutory policy, concerning local matters not otherwise governed or limited by federal law.<sup>3</sup> Although residents of Puerto Rico have a form of U.S. citizenship that includes certain “fundamental rights,” such as due process of law, and many privileges of citizenship, such as the right to travel with U.S. passports, they have no right to vote in national elections, and their sole representative in the U.S. Congress is a nonvoting emissary to the U.S. House of Representatives. As a result, they cannot participate in developing U.S. law or foreign policy, nor do they have any vote in the legislative body that controls their destiny through laws and governmental policies.

The disenfranchisement of the people of Puerto Rico for more than a century, since the United States acquired Puerto Rico from Spain at the end of the nineteenth century, cannot be squared with our nation’s historic commitments to equality and self-determination, with the international treaties and covenants the United States has joined since World War II, or with other steps the United States has taken during the past 50 years to resolve the political status of territories under U.S. control—e.g., the admission of Alaska and Hawaii as states of the Union and termination of the U.S.-administered United Nations trusteeship over Micronesia and other Pacific island territories. Although other U.S. territories suffer similar disadvantages, Puerto Rico’s status as the largest, most populous, and most economically significant creates special reasons why the United States should now address the steps necessary to ensure self-determination and full self-governance for U.S. citizens there.

Puerto Rico is currently home to nearly 4 million U.S. citizens—a population equal to or greater than that of 25 U.S. states. Furthermore, as statutory U.S. citizens, persons born in Puerto Rico have been allowed by Congress to migrate, without restriction, to the mainland of the United States. Approximately 4 million persons of Puerto Rican birth or descent currently reside within the United States, many of them with strong ties to family on the island and an intense interest in the relationship of Puerto Rico to the United States. For these and other reasons, the people of Puerto Rico represent a culturally and socially significant part of American society.

Puerto Rico depends financially on U.S. support, and thus the United States has a vital interest in its economic health. The federal subsidy of

Puerto Rico's "commonwealth" system of limited internal self-government is currently estimated at \$16 billion annually and is growing each year.<sup>4</sup>

Puerto Rico holds strategic importance as the U.S. military's southeastern-most stronghold, for more than a century housing one of the largest U.S. military bases in the world at Roosevelt Roads. Although the major bases in Puerto Rico have been closed, operations could be reactivated if needed in the future, and Puerto Rico continues as an important area for U.S. military recruitment, ranking alongside the top five U.S. states in per capita military service. Given the size of Puerto Rico's population, its economic and strategic importance to the United States, and the changes taking place in Latin America and the Caribbean, the territorial model for U.S. administration of Puerto Rico—under which millions of people remain disenfranchised and without an equal voice at the national level—has become even more of an anachronism.

Past efforts to move Puerto Rico toward a permanent status—as a state or as an independent nation—have foundered, because of lack of interest in and guidance by Congress and because of the resulting confusion among residents of Puerto Rico. Plebiscites to consider status options that were held in 1967, 1993, and 1998 have been ineffective and inconclusive.<sup>5</sup> The President's Task Force report has proposed a series of steps that Congress and the people of Puerto Rico can take to resolve the political status of Puerto Rico and set it on the path toward a permanent status.

## ORGANIZATION OF THIS BOOK

Chapter 1 describes the treatment of U.S. territories since the first Congress adopted the Northwest Ordinance. Chapter 2 outlines the constitutional framework for the consideration of territorial issues and summarizes the most significant opinions of the Supreme Court on territorial issues, particularly as they pertain to Puerto Rico. Chapter 3 discusses the international law context of these territorial issues. Chapter 4 describes recent efforts by the executive branch to clarify the status of Puerto Rico and other territories. Chapter 5 discusses the problems with so-called enhanced commonwealth proposals that have been made by the pro-commonwealth party in Puerto Rico. Finally, chapter 6 de-