Puerto Rico and PROMESA: Reaffirming Colonialism

written by Pedro Cabán | June 27, 2017

“Puerto Rico will be in a death spiral!”

With this dramatic announcement, Governor Alejandro García Padilla transformed the island nation’s long-simmering debt overhang problem into an international spectacle. A financial mess that seemingly concerned only institutional investors, municipal bondholders, and some hedge fund managers exploded into a full-blown debt crisis with disquieting parallels to the situation in Greece.

Puerto Rican officials revealed that, given the depressed economy, the government could never generate the revenues required to pay the staggering $73 billion debt. They warned that without federal assistance Puerto Rico would soon face a profound humanitarian crisis that the insular government was incapable of managing. The federal government’s response was the Puerto Rico Oversight, Management, and Economic Stability Act, popularly known by its acronym, PROMESA. The law, signed by President Obama on June 30, 2016, authorizes the president of the United States to appoint a financial control board with extraordinary powers and with a mandate to enforce measures to compel Puerto Rico to repay its creditors. According to the law, the financial control board “holds supremacy over any territorial law or regulation that is inconsistent with the Act or Fiscal reform plans.”

PROMESA gives the oversight board “certain sovereign powers over the Puerto Rican government and its instrumentalities.”[1] The sublimely understated purpose of the bill “is to provide a method for a covered territory to achieve fiscal responsibility and access to capital markets.” But PROMESA was designed to protect bondholders from catastrophic losses, imposes fiscal discipline, and mandates deep structural adjustments. Ultimately, PROMESA will enforce a friendly investment environment for U.S. capital. Title III of PROMESA also authorizes the U.S. District Court to restructure the debt if the oversight board is unable to reach a consensual agreement with the creditors. The oversight board filed the petition for debt restructuring with the court on May 5, 2017.

PROMESA has resurrected issues that are troubling legacies of Puerto Rico’s status as a colony of the United States. One persistent issue is the measure of authority granted by the federal government to the Puerto Rican people to govern themselves. Puerto Ricans, whether living in the diaspora or the colony, have consistently fought to diminish or eradicate the bonds of colonialism. Throughout their history, Puerto Ricans have contested the federal government’s overbearing control, relentlessly seeking to end or redefine the onerous terms of their colonial subordination. PROMESA also revealed that irrespective of which political party controls the colonial state, whether the Popular Democratic Party or the New Progressive Party, neither can halt the inevitability of

Puerto Rico's fiscal debacle and in fact are both duplicitous in creating the debt crisis.

PROMESA reaffirms without equivocation that Puerto Rico is a colony of the United States. Alone among the four U.S. congressional representatives of Puerto Rican descent, Luís Gutíerrez waged a vigorous campaign against PROMESA. He pointed out that "the control board and its members, no matter who they are, start with a deep ocean of mistrust from the Puerto Rican people, who question why a new layer of opaque, undemocratic, colonial oversight and control is being imposed in secrecy."[2] Governor Alejandro García Padilla objected to the extraordinary powers of the board, which are "excessive" and "not consistent with our country's basic democratic principles."[3]

But PROMESA has also energized Puerto Ricans to actively confront the financial control board and protest the austerity measures imposed by the island's ineffectual political class. This resistance is binational, multisectoral, crosses ideological lines, and might be unparalleled in Puerto Rico's long quest for self-determination. Puerto Ricans have overwhelmingly derided the United States for enacting this avowedly colonial legislation. They have challenged the credibility and legitimacy of an oversight board comprised in part by financial capitalists implicated in the very debt crisis they are tasked with resolving. Students have marched by the thousands to protest the $450 million cut to the University of Puerto Rico that the oversight board ordered. Puerto Ricans have demanded an audit of the outstanding debt to determine the legality of government debt issuances. Activists in New York and Puerto Rico have disrupted meetings of the oversight board. The Center for Puerto Rican Studies at the City University of New York organized "Diaspora Summits" for grassroots organizations and activists. New York-based Puerto Rican journalists Juan González and Ed Morales have written extensively on the politics and economics of PROMESA and have disputed complacent narratives from established media sources. The nonpartisan Center for a New Economy in Puerto Rico generates sobering, well-documented position papers that are critical of PROMESA. Federal Judge Juan Torruella called for civil resistance and an economic boycott, after denouncing PROMESA as "the most denigrating, disrespectful, anti-democratic, and colonial act" the United States has perpetrated against the people of Puerto Rico.[4]

The process that resulted in the enactment of PROMESA was every bit as colonial as the legislation. Neither the Puerto Rican government nor representatives of the different political forces in Puerto Rico were formally involved in designing the law. PROMESA is not the first time that Puerto Ricans were denied any voice in a decision that will affect their futures. In the 1898 Treaty of Paris negotiations, the fate of the inhabitants of the Spanish colonies ceded to the United States was decided without involvement of the people of Cuba, Puerto Rico, and the Philippines. Article IX of the treaty simply states that "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." Indeed, by 1898 the United States had a long tradition of excluding racialized inhabitants of acquired territories from any role in deciding their legal standing within the empire. PROMESA has resurrected this shameful imperial practice. In effect, PROMESA redefines the U.S. citizens of Puerto Rico as racialized native inhabitants of a mere territorial possession. They are denied representation in Congress but are subject to its plenary powers. Ultimately PROMESA embodies the quintessential contempt for Puerto Ricans as colonial subjects who have been granted a substandard U.S. citizenship that is highly racialized and who can be discounted in momentous decisions that affect their lives.

U.S. citizenship is inconsequential for the inhabitants of Puerto Rico when it comes to determining their economic and political future. But with the conferral of statutory U.S. citizenship in 1917, Puerto Ricans were allowed to migrate freely to the United States. Migration flows linked to changes in the island's political economy are an unintended consequence of granting U.S. citizenship to Puerto Ricans. In the last decade, 10 percent of the population, among them many highly educated young professionals, has left the island. Depopulation started in 2006 when Section 936, a fiscal

measure enacted by the United States to enhance capital accumulation by American firms operating in Puerto Rico, was terminated. The current phase of depopulation surpasses the great migration during the post-World War II years. In both cases the United States served as a safety valve for the relocation of Puerto Rico's army of redundant labor. But there is a critical difference. Post -World War II migration was designed as a population-control measure by policymakers in order to mitigate the profound labor market disruptions caused by Puerto Rico's transition from an agrarian to a manufacturing economy. The twenty-first-century migration is also characterized by the movement of superfluous workers, but it is an unplanned, desperate action by Puerto Ricans. They are compelled to seek employment in uncertain labor markets in the United States rather than live with the certainty of a life of economic privation, drastically reduced public services, diminished educational opportunities, and a collapsing health system.

PROMESA is actually a more restrictive anti-democratic law than either the Foraker Act (1900) or the Jones Act (1917), the foundational documents of Puerto Rico's current colonial status. Under both laws, veto authority over insular legislation was reserved for an appointed insular governor, Congress, and the president. Moreover, Puerto Rico falls within the jurisdiction of the 1st U.S. Circuit Court of Appeals, which can vacate legislation enacted by the insular government that the court deems unconstitutional. In 1947, Puerto Ricans were permitted to elect their governor, although legislation approved by the governor could still be overwritten by either Congress or the president. The financial control board reclaims the federal government's triple veto over local legislation. However, there are two significant differences between PROMESA and the early colonial legislation. The Foraker and Jones acts were comprehensive colonial legislation that assigned Puerto Rico key strategic and economic roles in the expanding American empire. In contrast, PROMESA's function is strictly pecuniary, to find ways of extracting wealth from Puerto Rico. Secondly, Congress also designed the Foraker and Jones acts to generate revenue to finance the operation of the colonial administration. PROMESA, on the other hand, will enforce a large reduction in the scope, size, and financing of the colonial administration in order to generate cost savings that will be transferred to the creditors. The oversight board has the authority to deny the Puerto Rican government from fulfilling its constitutional responsibility to "promote the general welfare" and instead will operate as a collection agency for panicking creditors, many of whom are high-risk speculators.

The financial control board is historically unprecedented. Although it is an instrument of the federal government, it acts independently as its surrogate to impose fiscal discipline and will do so by enforcing harsh austerity measures. PROMESA is promoted as being revenue neutral, or as its advocates put it, "at no cost to American taxpayers." The nefarious feature of PROMESA is that it restores the humiliating practice first established by the Foraker and Jones acts to force Puerto Ricans to pay for their colonial subordination. PROMESA authorizes "the board to require the Puerto Rican government to provide the board with a dedicated source of funding, not subject to further legislative action, to cover its expenses." The Congressional Budget Office estimated the administrative costs for the oversight board at $370 million for the decade starting 2016.[5] Included in this amount is the $625,000 annual salary for Natalie Jaresko, the former finance minister of the Ukrainian government, who serves as the board's executive director. Congress has ordered heavily indebted Puerto Rico to finance the operation of an autocratic board whose purpose is to intensify wealth extraction from inhabitants of the island. This fundamental inequity in the law moved San Juan Mayor Carmen Yulín Cruz to remark, "So not only are they taking democracy away from Puerto Rico, but they're also doing the following: It's costing us money to inflict pain on our own people. And that is totally unreasonable. I cannot think of anything more un-American than that."[6]

Not since the establishment of the Commonwealth of Puerto Rico in 1952 have Congress, the president, and the Supreme Court acted in such unison to sort out a colonial problem of national import. But unlike the process that culminated in the Commonwealth, a process that created a

legitimating chimera of consultation between the colonized and colonizer, PROMESA is a flagrant demonstration of U.S. colonial power and contempt for Puerto Rico. As such, PROMESA is not merely a device to extract wealth from an impoverished people to profit U.S. financial institutions. PROMESA is also a muscular reaffirmation that Puerto Rico is a mere territorial possession of the United States, without any constitutionally valid recourse to challenge the wonton exercise of imperial power. House Speaker Paul Ryan's press office affirmed that Puerto Rico had no place at the table to discuss the debt crisis. His office "verified" the constitutionality of the bill. "Puerto Rico is a U.S. territory and the Constitution explicitly gives Congress the power to 'make all needful Rules and Regulations respecting the Territory or other Property belonging to the U.S.' Need we say more?"[7] PROMESA gives the lie to President Truman's proclamation that the Commonwealth of Puerto Rico "will be a government which is truly by the consent of the governed." Whatever illusions may have lingered from the glory days of the Commonwealth, when Truman announced that "full authority and responsibility for local self-government will be vested in the people of Puerto Rico," were dashed when President Barak Obama signed the PROMESA bill.[8] The blunt exercise of imperial power and callous dismissal of a post-World War II narrative that symbolically cast Puerto Ricans as autonomous political actors within the territory mark a watershed moment in U.S. colonial rule. Indeed, PROMESA degrades the 1950 Senate Committee statement that the Commonwealth of Puerto Rico "is designed to complete the full measure of local self-government in this island by enabling the 2 1/4 million American citizens there to express their willingness and to create their own territorial government."[9] Federal Judge Torruella warned that under PROMESA, the "colonial grip of the plenary powers" invested in Congress would in fact "be tightened to a virtual stranglehold."[10] Indeed, in a 2017 study, the Harvard Law Review concluded that "Puerto Rico is even further from true self-governance today than it was in 1953."[11]

Ryan cynically continues to perpetuate the myth that Puerto Rico has sovereignty over domestic affairs when he claims that "the Puerto Rican government's ceding of its authority to the financial control board is a huge, but necessary move." To assert that Puerto Ricans voluntarily relinquished a sovereignty that was stolen from them by the United States 120 years ago is an astounding deception. Puerto Ricans cannot cede a sovereignty they never possessed under U.S. colonial rule. The rationale for imposing the control board is based on a barely concealed racist depiction of Puerto Ricans as lesser Americans who are incapable of responsible political behavior. Notions of Puerto Rican foreignness are happily parroted in the right-wing media. In his interview with Governor Ricardo Rossello, snarky right-wing commentator Tucker Carlson could not resist the impulse to cast Puerto Ricans as "third-world people" unfit for U.S. statehood. In his insolent interrogation of the governor, Carlson revealed a skepticism that Puerto Ricans were "real Americans," notwithstanding their U.S. citizenship.[12]

PROMESA revives a dormant and derogatory image of Puerto Ricans as colonial subjects who cannot be trusted and who lack the requisite aptitude to manage a complex political economy. Paul Ryan placed most of the fault for the crisis on Puerto Rico: "Decades of fiscal mismanagement have created a nightmare scenario where this U.S. territory is in way over its head––to the tune of $118 billion in the form of bonds and unfunded pension liabilities."[13] Ryan justified federal intervention by denouncing the Puerto Rican government because "it paved the way for this disaster with decades of irresponsible policies like overspending and fiscal mismanagement."[14] He does reserve some scorn for Wall Street, which "didn't help by giving the government loans that it was clear it couldn't pay back," but ultimately PROMESA was designed to compensate speculators for their reckless actions.

Representative Sean Duffy, one of PROMESA's sponsors, lashes out at the Puerto Rican government: "Years of disastrous polices have completely wrecked Puerto Rico's economy. As a result, the island and its millions of American citizens face a humanitarian crisis."[15] Bob Bishop, who chairs the Senate Committee on Natural Resources, accused "Puerto Rico's local politicians" of having "accelerated

the crisis on the island through the passage of harmful legislation."[16] The American Enterprise Institute argued that the crisis was not simply "a result of highly irresponsible public spending activities and of the egregious mismanagement of its economy by the Puerto Rican government." The "reckless lending behavior of the creditors" also spurred the crisis.[17]

The portrayal of Puerto Ricans as inept is part of a long-standing trope U.S. officials have deployed to deny the inhabitants of Puerto Rico self-government. Ryan informed Puerto Ricans that they "will learn fiscal discipline from a board of experts who can create efficiencies in state-run corporations." Indeed, PROMESA is portrayed as well-intentioned and beneficent and designed primarily to help debt-ridden and poor Puerto Rico forestall an imminent humanitarian crisis. In this official account, the United States had little choice but to intervene to protect the Puerto Rican people from an inept government. The proponents of PROMESA make their case on grounds that are disturbingly similar to those uttered by Secretary of War Elihu Root. Root was the principal architect of U. S. colonial policy for the territories acquired from Spain, and he adamantly resisted self-government for Puerto Rico. In 1898 Root warned that Puerto Ricans "would inevitably fail without a course of tuition under a strong and guiding hand." He argued that Puerto Ricans could not be "fully entrusted with self-government." Root reasoned that after a sustained period of benevolent colonial tutelage, eventually Puerto Ricans could "demonstrate their increasing capacity to govern themselves with less and less assistance."[18] Similarly, PROMESA details the specific conditions that Puerto Rico must meet for termination of the oversight board. The oversight board will exercise sovereignty over Puerto Rico for at least four consecutive years and will relinquish it only if the government regains access to credit markets, has developed an approved budget, and abandons deficit financing. Puerto Ricans will regain their supervised autonomy only if they behave responsibly by exercising "fiscal discipline" and by acquiescing to the oversight board's orders.

It is characteristic of an imperial mindset that among the thousands of articles that have been published on the Puerto Rican debt crisis in U.S. sources, seldom is colonialism discussed as a source of the debacle. Economist and Nobel laureate Joseph Stiglitz is one of the few prominent national figures who calls on the U.S. to "take responsibility for its imperialist past and neocolonial present. Washington owes Puerto Ricans a future based on democratic legitimacy and a financially and socially viable development strategy—a development strategy that is more than a set of tax breaks for profitable U.S. corporations."[19]

Footnotes

1. Congressional Budget Office, *Cost Estimate: HR 5278* (June 3, 2016), 3
2. Congressional Record-House, September 7, 2016, Pg. H5100. (accessed 5/10/17).
3. Danica Cotto and Mary Clare Jalonick, "Relief and Anger in Puerto Rico as Congress Acts on Debt," *Associated Press News,* May 20, 2016 (accessed 5/2/17).
4. Speech at Colegio de Abogados de Puerto Rico, San Juan, Puerto Rico, Sept. 11, 2016 (accessed 4/30/17).
5. CBO, *Cost Estimate*, 3
6. **"**Puerto Rico Is Being Left Voiceless: San Juan Mayor Condemns Bill to Create 'Colonial Control Board,'" DemocracyNow.org, June 15, 2016 (accessed 5/8/17).
7. Speaker Ryan Press Office, **"**Verified: House Bill Protects Taxpayers from Bailout, Requires Tough Choices from Puerto Rico, April 13, 2016 (accessed 4/30/17).
8. Harry S. Truman, "Special Message to the Congress Transmitting the Constitution of the Commonwealth of Puerto Rico," 1952, in Gerhard Peters and John T. Woolley, *The American Presidency Project* (accessed 2/2/17).
9. United States Senate Committee of Interior and Insular Affairs, 81st Congress 2nd Session 1950.
10. Juan R. Torruella, "Outstanding Constitutional and International Law Issues Raised by the United

States-Puerto Rico Relationship," *Minnesota Law Review* (100, no. 2, 2016), 79-102.
11. Harvard Law Review, "U.S. Territories. The International Place of Puerto Rico" (V.130. No. 656), 1679.
12. Tucker Carlson, "Puerto Rico: Statehood or Independence. Guest Puerto Rico Governor Ricardo Rossello," *Tonight,* Fox News, March 21, 2017.
13. Paul Ryan, "Congress Must Pass PROMESA to Protect American Taxpayers," *Washington Examiner*, June 9, 2016 (accessed 5/1/17).
14. Ryan Press Office, "Verified."
15. Sean Duffy, "Duffy Introduces Puerto Rico Oversight and Debt Restructuring Plan," press release, May 18, 2016 (accessed 5/3/17).
16. *Committee on Natural Resources Markup Memorandum, HR 5278* (accessed 4/30/16).
17. Desmond Lachman, "PROMESA Bill Offers Good First Step for Puerto Rico's Recovery," American Enterprise Institute, June 14, 2016 (accessed 4/15/17).
18. Robert Bacon and James Brown Scott, ed., *The Military and Colonial Policy of the United States: Addresses and Reports by Elihu Root* (Harvard University Press, 1916), 165.
19. Joseph Stiglitz and M. Marj Medish, "What the United States Owes Puerto Rico," *Wall Street Journal,* Aug. 14, 2015.