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CONFIDENTIAL: FOR COMMISSION MEMBERS ONLY

UNITED STATES - PUERTO RICO
COMMISSION ON THE STATUS OF PUERTO RICO

SECOND DRAFT OF PROPOSED COMMISSION REPORT

PREPARED BY COMMISSION STAFF

JULY 1966

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PART I

THE COMMISSION'S CONCLUSIONS AND RECOMMENDATIONS

Introduction

This Commission grew out of an exchange of letters released on July 25, 1962, between the late President John F. Kennedy and the then Governor of Puerto Rico, Luis Munoz Marin, commemorating the tenth anniversary of the Commonwealth. Both recognized that despite ten years of extraordinary economic and social achievement, there was room for further institutional growth within the United States-Commonwealth relationship. They agreed that it was the proper time to consult the people of Puerto Rico concerning further development of the Commonwealth relationship; and that also, "both as a matter of fairness to all concerned and of establishing an unequivocal record," the people of Puerto Rico should be afforded the opportunity to express a status preference between a more fully developed Commonwealth, Statehood and Independence.

The proposed principles underlying a more fully developed Commonwealth along with definitions of Statehood and Independence were contained in Joint Resolution No. 1 passed by the Legislative Assembly on December 3, 1962. Subsequent efforts, however, to develop with the Congress a procedure for consulting the people of Puerto Rico encountered obstacles of deeply-felt differences over political status among the people of Puerto Rico, as well as of conflicting views about the validity and the reality of the status alternatives. Therefore, instead of attempting to formulate a procedure for conducting a referendum, Congress invited the Legislative Assembly of Puerto Rico to establish this joint Commission to "study all factors . . . which may have a bearing on the present and future relationship between the United States and Puerto Rico."*

*Public Law 88-271, February 20, 1964; 78 Stat. 17.

1 In accordance with its mandate the Commission has conducted a
2 contemporary review of Puerto Rico's status. It adopted, at the outset,
3 a Program of Studies designed to insure systematic analysis of the most
4 significant aspects of the United States-Puerto Rican relationship.

5 The Commission also held hearings in San Juan, Puerto Rico, during
6 which extensive testimony was taken on three broad categories of questions
7 affecting status: legal-constitutional in May 1965; social-cultural in
8 July 1965; and economic in November-December 1965. Notice of the hearings
9 was widely publicized in Puerto Rico and all who wished to be heard were
10 given an opportunity to testify. In all, the Commission heard (123)
11 witnesses over a period of (14) days comprising about (2,000) pages of
12 testimony. A wide variety of experts on questions relevant to the status
13 problem were also consulted and comment was invited from all who wished
14 to do so.

15 There were no clearcut guidelines on how the Commission should proceed
16 with its work. As far as can be determined, this is the first occasion,
17 except for the month-long effort of the President's Committee for the
18 Alteration of the Organic Act in 1943, that a comprehensive review of the
19 status question has been undertaken by a joint United States-Puerto Rican
20 group aided by professional staff and expert consultants. It is probably
21 also the first time that public hearings concerning the cultural aspects
22 of status were conducted during which witnesses offered specific testimony on
23 cultural, social and historical dimensions of the present status or proposed
24 alternatives.

25 This Commission is profoundly aware that there is more to the subject
26 than came within reach of its efforts. When the destiny of a people is at
27 issue there can be no "final" or "complete" studies. For the principal
28 subject is in the realm of a people's deepest commitments to its own ideals
29 and values, and it is not given to Commissioners or to scholars to know or
30 understand all that underlies those ideals and values. The Commission
31 believes, however, that the extensive product of its work reflects the
32 sincerity of its effort to understand and delineate a complicated and
33 sensitive question.

1 In this product, which will be available to the public, is included
 2 the verbatim, bilingual transcript of all the hearings; the summary of the
 3 discussion of a special panel of legal experts which was conducted on the
 4 legal and constitutional issues; the transcript of a staff and liaison
 5 staff presentation followed by a Commission discussion on economic
 6 questions; a series of background reports by leading scholars on major
 7 questions bearing upon the status issue; a bibliography of materials
 8 covering the broad range of United States-Puerto Rican relations; and
 9 staff studies and memoranda on technical and other questions bearing on the
 10 problem. In much of this documentation novel ground was explored. For
 11 example, despite the fact that the status question has in varying degrees
 12 been an issue in United States-Puerto Rico relations for over sixty years,
 13 no history of the status question was published until this Commission
 14 arranged to do so. Indeed, all of the special studies contain material
 15 which has been published for the first time. It is gratifying to note
 16 that already the material has been requested for use in academic institu-
 17 tions both in Puerto Rico and in the United States.

18 The cooperation received from the people of Puerto Rico, the
 19 Government of the Commonwealth of Puerto Rico and the numerous departments
 20 and agencies of the Government of the United States has been outstanding.
 21 Noteworthy, too, has been the cooperation of the principal political
 22 parties and of other groups in Puerto Rico concerned with the status
 23 question.*

24 The Mainland Commissioners wish in particular to express their special
 25 gratitude for the generous courtesy and hospitality they received from
 26 the people of Puerto Rico who never permitted the great stakes that this
 27 issue holds for them to diminish the graciousness of their welcome. The
 28 Puerto Rico Commissioners wish in turn to express their deep appreciation
 29 to the Mainland Commissioners for their sincere interest as well as for
 30 the effort and the time they devoted to the work of the Commission.

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32 The Commission regrets that the Independence Party Representative
 33 resigned prior to the drafting of this Report. However, in accordance
 with its mandate, the Commission thoroughly analyzed the Independence
 alternative.

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This report consists of two parts. This part of the report, Part I, contains the Commission's conclusions and recommendations resulting from the study. Part II is in the form of appendices devoted respectively to the legal and constitutional, the economic, the socio-cultural factors of the status question, the history and the work of the Commission and a selected bibliography on United States-Puerto Rico relations.

Conclusions

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Before presenting its conclusions and recommendations, the Commission wishes to record its satisfaction that the bonds of a close friendship which unite Puerto Rico and the United States have been reaffirmed in the course of the Commission's work.

Both Puerto Rico and the United States share a common commitment to individual freedom, to fundamental human rights and to the traditions of democratic, representative government. Both are vitally interested in the economic growth and in the political development of the Caribbean area, within which Puerto Rico has provided a worthy example of progress and stability. Finally, both Puerto Rico and the United States have pledged their resources and their efforts to the success of the Alliance for Progress in its historic mission for Hemispheric development.

These mutual interests of Puerto Rico and the United States are the product of a history of increased understanding out of which has also grown a creative association. The foundation for both the mutual interests as well as the creative association has been the common United States citizenship. In 1952, 77% of the people of Puerto Rico voted for their two principal political parties that advocated a permanent union between Puerto Rico and the United States based upon common United States citizenship; and this percentage has since increased steadily with each election, reaching 94% in 1964.

It is with a strong awareness, therefore, of the intimacy of the friendship between Puerto Rico and the United States and of the particular obligation that this friendship imposes for the consideration of the wishes of the people of Puerto Rico, that the Commission presents the following conclusions from its study of the factors having a bearing on the present and future relationship between Puerto Rico and the United States.

1 The Commission's major conclusion is that all three forms of
 2 political status - the Commonwealth, Statehood, and Independence - are
 3 valid and confer equal dignity and equality of status and of citizen-
 4 ship upon the people of Puerto Rico. Any choice among them is to be
 5 made by the people of Puerto Rico, and the economic, social, cultural
 6 and security arrangements which would need to be made under each of
 7 the three status alternatives will require the mutual agreement and
 8 full cooperation of the Government of the United States.

9 From the examination of the legal and constitutional factors
 10 affecting the status question, the Commission concludes:

11 1. The principles of self-determination and mutual consent
 12 underlie the present relationship between Puerto Rico and the
 13 United States and should govern any future change in this relation-
 14 ship.

15 2. In accordance with these principles, it is essential to any
 16 changes in political status that Congress fully understand the
 17 wishes of the Puerto Rican people in order that it can be properly
 18 guided in working with the people of Puerto Rico to carry out their
 19 wishes.

20 3. All three status alternatives - the Commonwealth, Statehood,
 21 and Independence - are within the power of the people of Puerto Rico
 22 and the Congress to establish under the Constitution.

23 4. As a form of political status, each alternative confers
 24 equal dignity and equality of status and of citizenship upon the
 25 people of Puerto Rico. Statehood and Independence each confer
 26 dignity and equality in a manner traditionally understood. Common-
 27 wealth confers dignity and equality by virtue of the bilateral
 28 character of the relationship freely entered into by the people of
 29 Puerto Rico and the Government of the United States.

30 From the examination of the socio-cultural factors affecting
 31 the status question, the Commission concludes:

32 5. Each of the three status positions contains an ideological
 33 dimension: Each involves a concept of the identity of the people of

1 Puerto Rico, an interpretation of history, a way of life and an
2 aspiration for the future.

3 6. Each of the status alternatives is committed to the growth
4 of Puerto Rico's culture and the preservation of the Spanish language.
5 Each alternative would require a different form of adjustment to
6 fulfill its commitment.

7 7. Insofar as the questions of ideology and of culture and
8 language are involved in arriving at a consensus regarding their
9 future political status, it is the people of Puerto Rico themselves
10 who must resolve these questions.

11 From the examination of the economic factors affecting the
12 status question, the Commission concludes:

13 8. The economics of political status involves the problem of
14 comparing a tested pattern of growth under an existing set of
15 institutional relationships which has resulted in substantial
16 economic development, with patterns of economic growth under
17 alternative institutional arrangements proposed by the advocates
18 of Statehood and Independence.

19 9. Despite the impressive rates of economic growth of the
20 past two decades, the continued economic growth and development of
21 Puerto Rico is imperative. Puerto Rico's average per capita income
22 is still 40% below that of the lowest State of the Union. Further-
23 more, only through continued, rapid growth will it be possible to
24 resolve such problems as the persistent high rate of unemployment,
25 the uneven development of the Island, inadequate transportation and
26 communications and the indispensable need for further development
27 of education and other basic public services.

28 10. An immediate or abrupt change in political status would of
29 course involve serious economic risks and dislocations. These could
30 be partially offset by special economic and financial arrangements,
31 which, in the case of Statehood, would involve financial assistance
32 well beyond the levels Puerto Rico is today receiving. In the case
33 of Independence the costs for an abrupt change could be much greater.

1 To reduce the risks and dislocations or the costly adjustments of a change
2 to either political status, the change would need to be phased in
3 through a carefully designed plan of transition.

4 11. As far as economic standards alone are concerned, estimates
5 regarding the time intervals required for transitions depend upon
6 projections utilizing such criteria as growth rates of per capita
7 income, comparative wage rates with the Mainland, rate of unemployment,
8 levels of investment in the public and private sectors, and growth
9 rates under each of the status alternatives. For Independence there
10 are such additional criteria as alternative sources for financing
11 capital investment and the development of new export markets.

12 Professional economists differ as to when these projected
13 criteria may be fulfilled. Their estimates vary from 15 to 50 years
14 for Statehood, and even longer for Independence unless there is more
15 rapid economic development and integration of this Hemisphere than
16 can now be reasonably expected. However, the speed of Puerto Rico's
17 economic growth is such that any current estimates might be bettered
18 by actual experience.

19 12. As Puerto Rico continues to develop a time will come when
20 the economic structure can more readily absorb the risks of a status
21 change. It is therefore in the interest of proponents of each status
22 to maximize Puerto Rico's economic growth; for only as further growth
23 is achieved will the people of Puerto Rico be able to weigh
24 realistically the costs and advantages of each of the status
25 alternatives.

26 From the examination of all the foregoing factors affecting the
27 status question, the Commission concludes:

28 13. There should be a method for the people of Puerto Rico to
29 express by popular vote their preference as to a continuation of
30 Commonwealth status capable of growth and improvement, or for a change
31 in status to either statehood or independence. The Commission believes
32 that an expression of the popular will with regard to these preferences
33 would be helpful to all concerned, although it is a matter for the

1 people of Puerto Rico to decide whether, when and in what manner they
2 wish to express their preference.

3 In this regard, the Commission wishes to note Puerto Rican Law
4 No. 95, passed June 21, 1960, which permits the Puerto Rican people
5 to express a status preference. This law provides that 10% of the
6 qualified electorate can bring about a plebiscite on the status
7 issues without further legislation or executive action. Under this
8 or any other law of similar intent that the Legislature of Puerto Rico
9 is empowered to enact, the wishes of the people of Puerto Rico may
10 be expressed.

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RecommendationsMethod for Constituting Advisory Groups

The above conclusions and the facts underlying them point to the need, in the immediate future, for a method that provides for the consideration of proposals for improvements or growth, or for changes in the relationship between the United States and Puerto Rico.

The Commission recommends, therefore, that a method be established so that from time to time joint advisory groups can be constituted by joint action of the President of the United States and the Governor of Puerto Rico.

The joint advisory groups, which would be composed of members of the highest prestige and ability, would consider such specific problems as may be referred to them for advice and recommendation to the President of the United States and to the Congress of the United States, and to the Governor of Puerto Rico and the Legislative Assembly of Puerto Rico. The composition of the groups would of course differ, depending upon the nature of the problems assigned to them.

If the people of Puerto Rico should by plebiscite indicate their desire for statehood or independence, a joint advisory group or groups would be constituted to consider appropriate transition measures. If the people of Puerto Rico should maintain their desire for the further growth of the Commonwealth along the lines of the Commonwealth Legislative Assembly's Resolution No. 1 of December 3, 1962, or through other measures that may be conducive to Commonwealth growth, a joint advisory group or groups would be convened to consider these proposals.

Discussion of Status AlternativesContemporary Setting of the Status Question

The three status alternatives that stand today before the people of Puerto Rico are familiar concepts in the annals of Puerto Rico's history. They have some of their antecedents in the home rule, assimilationist and separatist political movements of the 19th century under Spain that led to Puerto Rico's Charter of Autonomy in 1897. They find their precedents in the status positions of the earliest political parties organized in Puerto Rico under United States rule, the Republican, the Federal and the Union Parties. Indeed, in 1904 the Union Party in strikingly modern terms urged "either statehood, independence or self-rule under the American flag" as the future status choices for Puerto Rico and as early as 1922 it declared "that the creation of the Free Associated State of Puerto Rico . . . is the program of the party". Although the Free Associated State as then described differed materially from the Commonwealth as established in 1952, from that time to the present, the three concepts have been regarded as the classic status agenda of the people of Puerto Rico.

Until the early 1940's, the status options were debated against the background of Puerto Rico's backwardness and stagnation. The dignity that each status position aspired to confer upon Puerto Rico foundered on the stark fact that none of the status choices offered a way out of the Island's persistent underdevelopment. Nor did a series of studies and inquiries, official and unofficial, produce any effective solutions for the dilemmas of underdevelopment. In Puerto Rico the status debate became a hopeless, divisive and, at times, explosive agitation. In the United States the verdict emerged that Puerto Rico was "not ready" for any of the three status alternatives; and the Island was limited to minimal self-government, unilaterally bestowed by the United States under the Organic Acts of 1900 and 1917. The extension of United States citizenship to the people of Puerto Rico in 1917 held prospects for the future rather than for improvements in political status at that time.

Not exactly true; Jones Act a considerable improvement over Foraker

1 The era of growth and development which began in the 1940's, and
2 which has been accelerated during the past two and one half decades, has
3 established a totally new setting for the status question. The extra-
4 ordinary transformation of a small, overpopulated island with severely
5 limited natural resources in a brief span of time has been without
6 parallel or precedent. The uniqueness of this achievement, which still
7 eludes so much of the underdeveloped world, can be noted in the most
8 recent Report on the World Social Situation of the United Nations Economic
9 and Social Council, which states:

10 "The performance of the developing countries as a
11 whole would appear to have declined in the early
12 1960's . . . It is an inescapable fact that, in
13 spite of the national and international efforts
the rate of progress in the low-income countries in
recent years has been a disappointment."*

14 During these same "recent years" Puerto Rico has been among the four most
15 rapidly growing communities in the world.

16 Puerto Rico's growth has placed it in the class of the world's
17 advancing communities. But its growth and development have not been in
18 the economic sphere alone. While developing communities almost universally
19 seem doomed to wrestle with the discouraging problem of the degree of
20 freedom to be sacrificed in order to attain or accelerate economic growth,
21 Puerto Rico has been among the few where economic development has been
22 accompanied by an ever-increasing participation of the people in its
23 political life. Nor, as in so many communities struggling to grow, has
24 a broadened popular participation in political life been achieved through
25 violence and political instability. In Puerto Rico a peaceful revolution
26 has produced a more stable democracy, an achievement that stands in sober
27 contrast to almost all of Latin America where only four countries have
28 been able to match Puerto Rico's record of regular elections since 1948,
29 the year when Puerto Rico first elected its own governor as well as its
30 own legislature which it had been electing since 1917.

31 *
32 Report on the World Social Situation, 28 February, 1966,
33 Pp. 1-2.

1 There has been a visible growth of significant proportions in the
 2 skills of public administration and administrative organization. The
 3 social advances in health and education, in technical skills, in
 4 professionalization and in communications have been among the highest
 5 in the world. A substantial investment in human development has brought
 6 recognition to Puerto Rico as a place in which the purpose of development
 7 is the welfare of its people. Finally, a modern cultural identity is
 8 emerging. It has its roots in Puerto Rico's Hispanic-American history
 9 and tradition; but its present flowering, in ever-increasing contact
 10 with other cultures, is the product of growth in literacy, advance in
 11 education and of the extension of the opportunities for a better life.

12 The contemporary setting for the status question of sustained
 13 growth and development since the 1940's has been a decisive factor for
 14 the progress of status evolution. In 1943 President Franklin D. Roosevelt
 15 convened a President's Committee for the Alteration of the Organic Act.
 16 It was the first joint body of United States and Puerto Rican representa-
 17 tives to consider fundamental problems of the Mainland-Island relationship.
 18 While many of the Committee's recommendations were not accepted, its
 19 conclusions were influential in the precedent-breaking appointment of the
 20 first Puerto Rican Governor in 1946. In the next year the Elective
 21 Governor Act was adopted, again breaking new ground by providing for
 22 Puerto Rico to elect its own governor with control over most of the
 23 Island's executive appointments. Then in 1950 to 1952, through a series
 24 of reciprocal acts by the United States and the people of Puerto Rico,
 25 the first constitution of Puerto Rico was drafted by a Puerto Rican
 26 Constitutional Assembly and was adopted by popular referendum. The
 27 constitution was approved by the President and the Congress and there was
 28 established the Commonwealth relationship.

29 These steps in the evolution of Puerto Rico's status constituted
 30 a complete reversal of the pessimistic verdict of the first forty years.
 31 From the view that Puerto Rico was too underdeveloped for any advance in
 32 political status, the rapid growth since World War II has established as a
 33 settled matter that Puerto Rico is fully capable, politically, intellectually

1 and morally, of assuming the responsibilities of self-government under
2 any political status. The United States Congress explicitly recognized
3 this capability when it ended the era of unilateral determination of
4 Puerto Rico's political status in 1952; and it is in this tradition
5 that the next steps in the evolution of the relationship between
6 Puerto Rico and the United States have been explored as a matter of
7 mutual interest, and with mutual esteem, by this bilateral Commission.

8 There is reason to be justly proud of the creation of a relation-
9 ship between a small community and a large metropolitan democratic
10 state which has encouraged self-government and self-determination
11 while fostering a truly phenomenal economic and social development.
12 Those who have studied Puerto Rico's progress, while acknowledging the
13 great importance of United States economic aid to Puerto Rico and the
14 flexible treatment reserved for Puerto Rico within the American
15 constitutional framework, have properly given primary recognition
16 to the genius and the energy of the people of Puerto Rico released
17 by a generation of unusual men from the Island and the Mainland, who
18 discovered and learned to utilize the range of democratic and creative
19 experimentation inherent in the fabric of Puerto Rico's relationship
20 with the United States. There is a debt of gratitude owed this
21 generation, for whatever will be the future political status of
22 Puerto Rico - whether it will be continued and developed Commonwealth,
23 Statehood, or Independence - will evolve from the present threshold
24 of Puerto Rico's achievements.

25 26 Commonwealth

27 The Commonwealth status which the people of Puerto Rico and the
28 people of the continental United States agreed upon through a series
29 of acts between 1950 and 1952 is a unique relationship. A thread of
30 creativity has characterized the relationship between Puerto Rico
31 and the United States from the very beginning, arising from the
32 confrontation of two cultures initially strange to each other and
33 from the need for a kind of relationship that could encourage the

1 growth of a crowded, underdeveloped island.

2 The Commonwealth relationship was novel in the method of its
3 creation. It was established through bilateral agreement between the
4 people of Puerto Rico and the Congress of the United States. The steps
5 in the procedure were similar to the familiar ones of Enabling Act
6 procedures for the admission of states to the Federal Union, but
7 without the result of creating a federal state. There was created,
8 instead, a new form of federal relationship. It was based upon two
9 spheres of government, that of constitutional self-government within
10 Puerto Rico, and that of the Federal Government, with the two spheres
11 of government connected by the applicable parts of the Federal
12 Constitution and by the Federal Relations Act.

13 There was a new departure, also, in the intention that the relation-
14 ship could continue indefinitely or could be changed. It was clearly
15 understood that the relationship could not be interpreted as being a
16 transition step toward any other status. There could be a new decision
17 by the people of Puerto Rico and the Congress of the United States, but
18 Commonwealth was regarded as a status valid in itself.

19 Although the Commonwealth relationship has operated successfully
20 for over fourteen years, it has inevitably, as in the evolving federal-
21 state relationship, revealed some undefined legal, political and economic
22 boundaries. For this reason, as well as because of strong opposition
23 from the proponents of Statehood and Independence, the Commonwealth has
24 been the subject of continuous debate from the time it was inaugurated.
25 The debate has often produced misunderstanding and confusion.

26 With respect to questions raised on the subject of the compact,
27 the Supreme Court of the United States is, of course, the ultimate
28 interpreter of the Constitution and it has not declared itself on these
29 questions. The weight of legal scholarship sustains the innovative
30 power of the Federal Government to create a new form of association -
31 including a binding association - in accordance with the desires of the
32 people of Puerto Rico. It is clear that the United States Government
33 entered into a solemn agreement with the Puerto Rican people in 1952

1 and that the agreement, referred to in the legislation as the compact,
2 bears permanent legal consequences. What the Supreme Court would find
3 the precise legal consequences to be of the bilateral arrangement
4 entered into in 1952 is a matter of conjecture. Nor is it possible to
5 say what procedure, if any, the Court would require for either its
6 clarification or modification. With regard to these and other questions
7 the Commission feels that there has been an excess of legalistic, some-
8 what academic, controversy.

9 The Commission does have views on the political character of the
10 Commonwealth relationship created in 1950-1952. The relationship is
11 politically and morally valid. It constitutes a solemn undertaking,
12 based upon mutual consent, between the people of the United States
13 acting through their Federal Government and the people of Puerto Rico
14 acting directly as well as through their established governmental
15 processes. It is absolutely clear that the people of both communities
16 are pledged irrevocably to the rights of self-government and to the
17 guarantees of fundamental human rights protected by both constitutions.
18 It is also absolutely clear that a solemn undertaking of such profound
19 character between the Federal Government and a community of United States
20 citizens is incompatible with the concept of unilateral revocation. It
21 is inconceivable that either the United States or Puerto Rico would, by
22 an act of unilateral revocation, undermine the very foundation of their
23 mutual progress: the fundamental political and economic relationships
24 which were established on the basis of mutuality.

25 A great deal has been said during the status debate of the last
26 dozen years about the permanency of the relationship. Since the under-
27 lying validity of the relationship is its bilateral character it will
28 be as permanent as the people of Puerto Rico and the people of the
29 United States wish it to be. As noted earlier, however, any future
30 change in political status by mutual consent is not foreclosed.

31 The key to the continuation and development of the relationship
32 between Puerto Rico and the mainland is United States citizenship. This
33 citizenship, which the people of Puerto Rico possess at birth, carries

1 with its basic personal and institutional protections which cannot be
2 encroached upon by the legislature of Puerto Rico or the Congress of the
3 United States. Present constitutional doctrine, therefore, would not
4 permit any action rendering ineffective the right of United States
5 citizens of Puerto Rico to determine their future, whether it will be
6 continued and developed Commonwealth, Statehood, or Independence.

7 One of the consequences of the prolonged status debate in Puerto
8 Rico has been that in contrast to the great vitality continuously evident
9 with regard to economic and social development, there has been only
10 limited institutional evolution of the Commonwealth idea within the
11 federal relationship.

12 Yet, just as the Constitution of the United States sets as a
13 legitimate object the formation of "a more perfect union", it is
14 appropriate that the Puerto Rican people should seek "a more perfect
15 Commonwealth," unless they have chosen another status. This is all the
16 more appropriate for two societies as vitally alive and as rapidly
17 changing as those of Puerto Rico and the United States. Since the
18 growth must primarily meet the needs of Puerto Rico the initiative
19 lies there. The Commission believes that any process of further
20 development would best be accomplished proceeding step by step as the
21 needs dictate. In this manner, the principles contained in Joint
22 Resolution No. 1 of December 3, 1962, should now be pursued, as
23 should also other pertinent proposals that may be conducive to
24 Commonwealth growth.

25 The Commission recognizes the Commonwealth arrangement as a
26 permanent, dignified, legal and creative kind of political status,
27 if the people of Puerto Rico so desire. The fact, however, that the
28 Commonwealth status contains the capacity for growth may at the same
29 time make another political status more viable. This is one of the
30 virtues of Commonwealth: It preserves for the future flexibility
31 for changes within itself and also as much freedom of choice as may
32 be mutually desired by Puerto Rico and the United States.

1 Statehood

2 Statehood has from the beginning of the relationship between
3 Puerto Rico and the United States been one of the articulate status
4 aspirations.

5 The development of a sturdy tradition of self-government in
6 Puerto Rico, the emergence of an able political leadership and the
7 creation of a growing economy with an increasing base for future growth
8 have all established a threshold from which it is now possible to
9 discern a path towards statehood.

10 The road to statehood is a familiar one. The first prerequisite
11 is a viable political and economic community. The second condition
12 is that a substantial majority of the United States citizens in a
13 given community must unequivocally request it. When these conditions
14 have been achieved, the American tradition has required that there then
15 be a period of active seeking of statehood by the people of the
16 community. For the seeking to succeed, Congress must vote statehood.
17 There has often been Congressional reluctance and those seeking
18 statehood have at times encountered multiple rebuffs before achieving
19 their objective.

20 Puerto Rico has met the prerequisite of a stable political
21 community fully capable, by virtue of its demonstrated capacity for
22 democratic self-government, of assuming the responsibilities of
23 statehood.

24 There is, however, a problem of economic adjustment. It is
25 clear that without a transition the conditions of statehood would
26 seriously endanger Puerto Rico's economy. On the realistic assumption
27 that most of a transition would need to precede the granting of state-
28 hood by Congress, the Commission as well as the partisan groups have
29 attempted to judge the length of a required transition.

30 The estimates vary. They reflect, in part, different economic
31 approaches with different degrees of importance attached to different
32 criteria of analysis. In part, they reflect the usual difficulties
33 inherent in the techniques of economic projection. In part, also, the

1 estimates admittedly contain some element of speculation, for they
2 project trends beyond the foreseeable future.

3 The Statehood transition estimate relies primarily on four
4 criteria being satisfied:

5 1. Continuation of a strong growth rate in per capita income at
6 least fifty percent higher than the average Mainland per capita income
7 growth rate since 1950.

8 2. The attainment of a per capita income level, resulting from
9 the above growth rate, which would permit the acceptance of the Federal
10 tax system. This criterion would be fulfilled when the Puerto Rico per
11 capita income (in real terms) equals at least the 1965 average for the
12 five lowest income states.

13 3. The continued rise in wage rates so that the imposition of
14 the Fair Labor Standards Act minimum rates would directly affect no
15 more than ten per cent of the covered workers.

16 4. The attainment of educational and training facilities and
17 levels approximately comparable to the Mainland average, taking into
18 account the particular requirements of the Puerto Rico environment.

19 The Statehood position is that these criteria could be fulfilled
20 within fifteen years; although some proponents of Statehood claim that
21 with generous assistance from Congress continued after statehood was
22 granted, the transition period could be reduced to five years. To
23 support their position Statehood advocates point to the generally
24 optimistic projections for Puerto Rico's continued rapid economic growth.

25 The Commonwealth critics of the Statehood position regard the four
26 criteria as insufficient on the grounds that they omit the criteria required
27 to answer the vital questions of Puerto Rico's economic growth after
28 Statehood. These criteria involve various aspects of fiscal autonomy,
29 which would disappear with Statehood. The problem is defined away,
30 contend the Commonwealth economists, if it is simply assumed that
31 Puerto Rico can grow after Statehood at the rate it has grown under
32 Commonwealth. Without fiscal autonomy, which sustains the incentives
33 for growth in the private sector, Commonwealth economists believe that

1 the Puerto Rican economy would be unworkable at any time in meeting even
2 minimum standards.

3 Commonwealth economists also argue that the four criteria could not
4 be fulfilled within the fifteen years projected by Statehood economists.
5 There is no margin of safety allowed, they contend, for the speculative
6 and unforeseeable elements in the fifteen year projection. Furthermore,
7 it is argued, the per capita growth rate needs to be substantially
8 higher than the rate projected by the Statehood economists, for the
9 attainment of the other three criteria within fifteen years. With
10 adjustments for these alleged shortcomings Commonwealth economists
11 conclude that fifty rather than fifteen years would be required to
12 fulfill the four criteria.

13 These conflicting projections proceed from different economic
14 approaches, and cannot, therefore, be reconciled. With the continued
15 growth of Puerto Rico's economy, however, there will emerge a firmer
16 basis of experience for the assessment of Puerto Rico's future
17 development.

18 The other requirement for statehood is the achievement of a
19 substantial majority among the people of Puerto Rico. No evidence has
20 been brought to the Commission to indicate that the required strong
21 preference for statehood has thus far developed in Puerto Rico.

22 There is a cultural question relating to statehood. If Puerto
23 Rico became a state it would be a case of an area possessing a
24 homogeneous, distinctive culture being incorporated into the United
25 States as a State. Statehood would necessarily involve a cultural
26 and language accommodation to the rest of the Federated States of
27 the Union. The Commission does not see this as an insurmountable
28 barrier; nor need this mean the surrender of the Spanish language nor
29 the abandonment of a cultural heritage.

30 31 Independence

32 Independence is a legitimate and dignified aspiration for the
33 people of Puerto Rico and is available as a status alternative if the

1 people of Puerto Rico so choose. Declarations by Presidents representing
 2 the two main political parties of the United States during the past
 3 twenty-five years have consistently stated that whenever it is the clear,
 4 expressed will of the people of Puerto Rico to be independent, the
 5 procedures leading to independence would be initiated in accordance
 6 with the principle of self-determination.

7 The principle of self-determination requires that Independence
 8 could be established only by democratic majority of the people of
 9 Puerto Rico. In the 1964 general elections the Independence Party
 10 polled only 2.7 percent of the popular vote. If Independence in the
 11 future gains the support of a majority of Puerto Ricans, its acceptabil-
 12 ity would depend on the size of the majority; since it is difficult
 13 to conceive that a substantial minority of United States citizens
 14 could be separated from the constitutional framework of the United
 15 States without their consent.

16 As in the case of the other status alternatives, the growth
 17 and development of Puerto Rico during the past twenty-five years
 18 makes a path to independence more discernible. In contrast to most
 19 developing countries Puerto Rico, politically, is fully capable of
 20 assuming the responsibilities of democratic self-government as an
 21 independent republic. In fact, Puerto Rico is already serving as
 22 a training center for developing countries in a broad range of
 23 governmental and private activities.

24 Projections regarding the period of time required, from an
 25 economic point of view, for transition to independence are very
 26 difficult for the reason that there are significant unknowns and
 27 intangibles. To avoid serious disruption of the economy a period
 28 of preparation of unknown duration before independence was granted,
 29 would be necessary for Puerto Rico to acquire such economic instruments
 30 as control over its monetary system and its balance of payments, while
 31 also developing some of the basic new institutions needed to guide a
 32 transition to independence. If the preparatory period was successful,
 33 most of the transition could take place after independence was granted.

1 The Commission recognizes that different economic criteria
2 need to be applied in the case of independence. Two important ones
3 are (1) the ability of an independent republic to find substitute
4 sources for financing capital formation; and (2) the ability to
5 develop alternative export markets. The position of the Independence
6 advocates is that the degree of transformation of the Puerto Rican
7 economy necessary to satisfy these two criteria could be accomplished
8 in the course of a twenty-year transition period. Conceivably, if
9 there was sufficient sacrifice, the criterion of financing capital
10 formation could be satisfied in a transition period of this length
11 of time. A much longer period would probably be necessary, however,
12 before a sufficient degree of economic and institutional transformation
13 could take place elsewhere in the Western Hemisphere for a Republic
14 of Puerto Rico to have the export markets necessary to sustain
15 economic growth.

16 For continued progress under independence, Puerto Rico would
17 need to seek a new set of relationships which could substitute or at
18 least supplement its present vital relationship with the United States.
19 The conditions of regional economic integration permitting the pattern
20 of trade and industry Puerto Rico would require for its vitality do not
21 yet fully exist in either the Caribbean or in Latin America. It is
22 difficult at present, therefore, to foresee Puerto Rican independence
23 without sustained generous amounts of aid from the United States,
24 other nations and international agencies, on a considerably larger
25 scale than such aid is or has been granted to countries of the size
26 of Puerto Rico.

27 The Commission conceives the achievement of an independent status,
28 if desired by the people of Puerto Rico, not as an abrupt separation
29 but as a series of adjustments along the Philippine pattern, resulting
30 in amicable relations. Conceived in this way independence would
31 inevitably retain many of the characteristics of an older friendship
32 and mutual understanding. It should be noted that independence would
33 carry the burden of successfully negotiating a set of new treaties

1 and other agreements with other countries, international agencies,
2 private investors, and the United States.

3 Under independent status Puerto Rico would probably continue
4 to develop its cosmopolitan life. While an independent status assumes
5 the emergence of a "national spirit" strong enough to organize,
6 sustain and meet the challenges of an independent community, for
7 Puerto Rico this does not necessarily imply a narrow and self-
8 defeating nationalism.

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Discussion of Recommendations

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3 In formulating its recommendations to provide for joint
4 advisory groups the Commission had in mind several factors which
5 have come to light in the course of its study and deliberations.
6 First, is the factor of the Commonwealth's continued success. As
7 noted earlier, the growth under Commonwealth not only serves to
8 validate its own position but is essential also to make possible
9 the realization of any other status without prohibitive hardships.

10 The second factor is the division among the people of
11 Puerto Rico with regard to the status choices. These divisions
12 have both ideological and political roots. Status choices, the
13 Commission has come to see, are in a sense political "sub-cultures"
14 within Puerto Rico's society. Each status viewpoint holds an inter-
15 pretation of history, a way of life, a concept of the Puerto Rican
16 identity, an an aspiration for a Puerto Rican destiny. Ideological
17 differences alone make consensus difficult; but that difficulty is
18 nurtured by the partisan political character of the status parties
19 and by electoral competition. Thus, political opposition and
20 ideology regularly enforce one another to intensify the conflict
21 over status. This has been evident to the Commission in the
22 course of its work and for that matter has been evident to
23 Puerto Ricans themselves during the past dozen years. The Commission
24 believes that the recommended ad hoc advisory groups may be useful
25 in channeling the status debate along more constructive lines.

26 A third factor which underlies the Commission's interest in a
27 joint advisory mechanism is what might be termed the "problems of
28 progress" now evident in Puerto Rico. Few communities in the world
29 have undergone such profound and far-reaching changes in so short
30 a time as has Puerto Rico. Puerto Rico is learning that modernization
31 is difficult and that rapid modernization multiplies the difficulties.
32 As old problems are resolved new ones are created. Questions
33 inevitably will be raised with respect to the flexibilities and the

1 special arrangements that characterize the relationship. Furthermore
2 as society and class structure are altered, new horizons and new
3 aspirations and new conflicts inevitably emerge.

4 It is for these reasons that the Commission has recommended that
5 a mechanism be established for the consideration, from time to time, of
6 improvements in the Commonwealth relationship, or of measures of
7 transition to Statehood or Independence depending upon the choice
8 expressed by the people of Puerto Rico.

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PART II APPENDICES

APPENDIX A

LEGAL-CONSTITUTIONAL FACTORS IN RELATION TO THE STATUS OF PUERTO RICO

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APPENDIX A

LEGAL-CONSTITUTIONAL FACTORS IN RELATION TO THE STATUS OF PUERTO RICO

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1 A. Historical Background

2 1. Relationship with Spain: 1493-1898

3 For 300 years, following the discovery of Puerto Rico by Ponce
4 de Leon in 1493, Spain treated Puerto Rico as a military outpost in the
5 Western Hemisphere. The system of government established for Puerto
6 Rico and for the other Spanish colonies in the New World was derived
7 from the Code of Laws of the Indies (1691) and the revised Code of
8 Spanish Laws (1795) both of which followed the doctrine of royal¹
9 absolutism.

10 This principle when extended to Puerto Rico meant that prior
11 to the 19th Century power was centered in a virtually omnipotent gov-
12 ernor who not only was the chief executive but also promulgated decrees,
13 headed the army and navy, was the chief fiscal official, the supreme
14 judge and, as royal vice-patron, participated also in ecclesiastical
15 authority. This total concentration of power in one official was
16 coupled with a high degree of governmental control over human affairs.
17 Thus, after a series of brutal battles, the Indian and Negro populations
18 were totally subjugated and even for the Spanish white colonists move-²
19 ment from town to town required express permission.

20 In the 19th Century there was a major growth in population in
21 Puerto Rico from about 150,000 people in 1800 to a million people by the
22 end of the century.³ This rapid rise was largely the result of the
23 influx of Spanish royalists who fled the revolutions against the mother
24 country which swept Central and South America. Its immediate signifi-
25 cance was that it changed the balance in Puerto Rico between the Negro-⁴
26 Indian population and the Spanish population in favor of the Spanish.

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28 1. Monclova, The Puerto Rican Political Movement in the XIX
29 Century (STACOM Special Study 1966) pp. 13-14.

30 2. Ibid, pp. 6-10, 14.

31 3. U.S. Census Bureau, Vol. I, Part 53, pp. 53-9, Table 1.
The exact statistics given are: In 1800, 155,426; 1899, 953,243.

32 4. Lewis, Puerto Rico: Freedom and Power in the Caribbean
33 (1963), p. 58.

1 This burgeoning of the politically aware population gave rise
2 to serious agitation by Puerto Ricans for increased participation in
3 their own government. Partly as a consequence of political difficul-
4 ties for Spain in Europe, Spain during the first quarter of the 19th
5 Century made its first major political concession to Puerto Rico. On
6 July 14, 1812, Governor Melendez Bruna promulgated a circular which
7 declared the Spanish National Constitution effective in Puerto Rico.
8 This Constitution, the first of its kind to be approved in Spain,
9 declared Puerto Rico an integral part of the monarchy. It granted
10 Spanish citizenship to all white Puerto Ricans and confirmed the
11 right to name a deputy with a voice and a vote in the Spanish Cortes
12 (the Spanish Parliament). In addition, it created a municipal corpo-
13 ration called a Provincial Assembly composed of nine members: the
14 governor, the intendent and seven landholders. This Provincial
15 Assembly had limited powers over certain local activities.

16 During the rest of the century, Puerto Rico's populace continued
17 to grow and to agitate for greater home rule. At various times reforms
18 were promised by Spain but always Puerto Rican hopes were frustrated.
19 In 1896 an agreement with the Spanish Liberal Party was effected by
20 Puerto Rico's leaders so that when this party came to power later that
21 year it arranged for the declaration of an autonomous charter for the
22 island.

23 Before 1897, pursuant to the Spanish National Constitution, the
24 government of Puerto Rico was headed by a Governor General appointed
25 by the Crown possessing broad executive and military powers. Except
26 for membership in the Cortes, islanders did not elect representatives
27 with legislative powers. Laws were either enacted in Spain or decreed
28

29 1. "Constitution Establishing Self-Government in the Island of
30 Puerto Rico by Spain in 1897," in Documents on the Constitu-
31 tional History of Puerto Rico, 2nd Edition, revised (Washington:
32 Office of the Commonwealth of Puerto Rico, 1964), p. 22.
33

1 by the Spanish appointed executive officials. Some municipal self-
 2 government was provided, but its effectiveness was often negated
 3 when Governors virtually hand-picked candidates for local office.
 4 The number of persons permitted to vote and serve in public office
 5 was sharply limited by rigid educational and property qualifications.
 6 In short, for most of the period of Spanish rule, opportunities for
 7 political expression and for a voice in the affairs of government
 8 were negligible for the vast majority of the people of Puerto Rico.¹

9 The Charter of 1897 was a substantial improvement upon this
 10 state of affairs. Puerto Rico would now elect delegates with full
 11 voting rights to both houses of the Cortes. In addition, there was
 12 established an elected Chamber of Representatives on the island and
 13 a 15-man Council of Administration (Senate), eight of whom were
 14 elected by Puerto Rico. The Governor General would continue to be
 15 appointed by the Crown and would select the remaining seven Councillors.
 16 The powers of the Governor were reduced by the initiatives allowed to
 17 the Puerto Rican legislature, but he retained the right to suspend
 18 civil rights and to refer insular legislation to the Council of
 19 Ministers of Spain if he felt it to be detrimental or unconstitutional.
 20 The Puerto Rican legislature was generally given power to pass on all
 21 matters of purely insular importance: to fix the budget and determine
 22 tariffs and taxes.² Commercial treaties were to be concluded by the
 23 home government but provision was made for Puerto Rican government
 24 concurrence.³

25 The Charter of Autonomy was stated to be bilateral in character.⁴
 26 However, the powers of the Governor General were exceedingly broad so⁵
 27

28 1. Hunter, Historical Survey of the Puerto Rico Status Question,
 29 STACOM Special Study (1965) p. 3.

30 2. Article 35; but see Article 36.

31 3. Article 37.

32 4. Article 2 of Additional Articles; Preamble, passim

33 5. E.g., Articles 2, 3, 41-43, 51.

1 that precise participation of the Puerto Rican people in their own
2 government is unclear.

3 The Charter of Autonomy was decreed in November, 1897. In
4 February, 1898, the first Puerto Rican cabinet was appointed and in
5 March, general elections were held for the legislature. In April,
6 the Spanish-American War was declared and in July, 1898, American
7 troops occupied Puerto Rico. The Charter of Autonomy was, thus, in
8 actual operation for a very short time. How well the Charter of
9 Autonomy would have worked out in practice no one can say. On paper,
10 it granted Puerto Rico a greater degree of self-government than Puerto
11 Rico was to receive under the Foraker Act of 1900 although substantially
12 less than Puerto Rico has today.

13 The above history is significant for the perspective it gives
14 to subsequent Puerto Rico-United States relations. Although the
15 problem of United States-Puerto Rico relations was completely novel to
16 mainland officials, to Puerto Rican leaders the issues appeared much
17 the same as under the Spanish. The failure for many years of continen-
18 tal leaders to recognize that what to the United States was the
19 beginning of a dialogue was to Puerto Rico the interruption of a long
20 and continuous effort at the moment when it seemed finally to be
21 successful contributed to many ill-considered and deprecatory statements
22 by mainland leaders. Much of the impatience of Puerto Rican leaders in
23 the early 1900's represented the accumulation of frustration and
24 resentment acquired through many years of struggle in their quest for
25 self-government. On the other hand, the heritage of frustration was to
26 make portions of the Puerto Rican populace less receptive and very
27 skeptical of significant attitudinal and institutional changes when
28 they occurred.

29 2. Relationship with the United States: 1898-1950

30 The Spanish-American War and the Treaty of Paris, which
31 concluded it, brought a new series of problems to the United States.
32 For the first time--Hawaii also had just been acquired--the United
33 States was in charge of governing territories which were geographically

1 separate from the mainland with large numbers of people culturally
2 quite distant from the culture of North America.

3 These problems were immediately recognized and the best way
4 to solve them was the subject of lengthy debates both in Congress,
5 the executive branch, and in the 1900 presidential campaign. The
6 debates centered about the shorthand question: whether the Consti-
7 tution followed the flag. Legally what was at issue was: (1)
8 whether the inhabitants of the newly acquired territories, including
9 Puerto Rico, were automatically citizens of the United States; (2)
10 whether the inhabitants of the newly acquired territories including
11 Puerto Rico had the protection of the Bill of Rights vis-a-vis the
12 Federal Government; and, (3) whether the Constitution prevented the
13 imposition of tariffs on imports from these territories. The 1900
14 Congress answered each of these questions in the negative.

15 The Foraker Act which Congress passed in 1900 established a
16 temporary civil government for Puerto Rico in place of the military
17 occupation. The Senate Report which accompanied the Act expressed
18 the desire to permit Puerto Rico's participation in government and
19 to avoid as far as possible radical changes in the Spanish Code and
20 judicial procedure then governing Puerto Rico. The report went on
21 to indicate the problems arising from the hurricane of August 8,
22 1899, the widespread illiteracy, and the lack of a general system of
23 public education.

24 Under the Foraker Act, executive authority was vested in the
25 governor and an eleven-member executive council, five of whom were to
26 be Puerto Ricans, all appointed by the President. This council also
27 constituted the upper chamber of the legislature and six of its
28 members were to hold high executive positions. The lower house of
29 delegates was to be composed of 35 members elected biannually by all
30 who qualified as voters on March 1, 1900.

31
32 1. United States Senate, Report No. 249 to accompany S. 2264
33 (56th Congress, 1st Session, 1900) pp. 1-2.

1 The governor could veto laws passed by the legislature, but
2 his veto could be overridden by a two-thirds majority of the insular
3 legislature. Congress, however, reserved to itself the absolute
4 authority to annul any law passed by the Puerto Rican legislature.
5 Congress never exercised this power.

6 An insular Supreme Court was established (appointed by the
7 President) with an appeal directly from it to the United States
8 Supreme Court. In addition, a United States District Court in Puerto
9 Rico was also established. Finally, the Act provided for a Resident
10 Commissioner to be elected biannually who would represent Puerto Rico
11 in Congress.

12 The Foraker Act disappointed Puerto Rico's leaders. They had
13 expected the democratic United States, in contrast to monarchist
14 Spain, to be more rather than less respectful of local government. On
15 March 2, 1917, a new Organic Act, known as the Jones Act, was passed
16 which was primarily designed to increase Puerto Rico's participation
17 in its own government and to eliminate, to a degree, the distinction
18 made by the Foraker Act and approved in the Insular Cases between the
19 citizens of the United States and the citizens of Puerto Rico.

20 Thus, the upper house which had been appointed by the
21 President was, under the Jones Act, to be elected and the majority
22 of the department heads were now to be appointed by the Governor with
23 the advice and consent of the insular Senate. The Governor similarly
24 was to appoint the insular magistrates with the advice and consent of
25 the insular Senate. This transfer of power from Congress and Federal
26 Government to the local officials was by no means complete since the
27 Attorney General and the Commissioner of Education were still appointed
28 by the President as were the members of the Puerto Rico Supreme Court.

29 Most significantly the 1917 legislation reversed the decision
30 that had been taken in 1900 and offered United States citizenship to
31 Puerto Rico with the option of refusal in individual cases and
32 promulgated a bill of rights for the island.

1 In the following decades as education became more widespread
2 and as Puerto Rico became more conscious of its own identity, Puerto
3 Rico urged increased control of its own affairs. On March 8, 1943,
4 President Franklin Delano Roosevelt, appointed a committee on the
5 revision of the Organic Act of Puerto Rico composed of Secretary
6 Harold Ickes, Abe Fortas, Under Secretary of the Interior; Rexford
7 Tugwell, then Governor of Puerto Rico; Father Raymond A. McGowan;
8 Senator Luis Munoz-Marin, then President of the Puerto Rican Senate
9 and Chairman of the Popular Democratic Party; Martin Travieso, Chief
10 Justice of the Puerto Rican Supreme Court; Senator Celestino Iriarte,
11 Chairman of the Union Republican Party and Jose Ramirez-Santibanez,
12 Chairman of the Liberal Party.

13 The Committee recommended a number of changes in the federal
14 legislation governing Puerto Rico including an elected Governor and
15 a judicial advisory council which would be the permanent body
16 concerning itself with Puerto Rican problems. The bill suggested by
17 the Committee did not pass. It was not until 1947 in the Elective
18 Governor Act that Puerto Rico obtained an elected Governor. The
19 Governor was given the power to appoint, with the advice and consent
20 of the insular Senate, the heads of all executive departments. In
21 addition, the 1947 Act provided for a Coordinator of Federal Agencies,
22 a federal official who was given authority over all federal functions
23 and activities in Puerto Rico. Finally, the President was given the
24 authority to except any federal law from applying to Puerto Rico.

25 At this stage, prior to 1950, Congress still reserved to itself
26 the power to nullify all insular legislation and the President continued
27 to have the power of final veto over insular laws. As mentioned earlier,
28 Congress had never exercised its power of nullification and in only three
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1 cases had the President exercised his power in upholding the
 2 Governor's veto.
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4 B. The Present Legal Relationship Between Puerto Rico and the United
 5 States

6 1. The Legislation of 1950-1952

7 In 1950, the United States Congress passed Public Law 600 which
 8 stated:

9 ". . . fully recognizing the principle of govern-
 10 ment by consent. . . the people of Puerto Rico may
 11 organize a government pursuant to a constitution
 12 of their own adoption." This law was adopted
 13 "in the nature of a compact."

14 The Act provided it became effective only after a referendum
 15 held in accordance with the laws of Puerto Rico. This referendum was
 16 limited to approval or disapproval of Public Law 600. If approved by
 17 a majority of the voters participating in the referendum, the Puerto
 18 Rican legislature could call a constitutional convention to draft a
 19 Constitution. If this Constitution were approved by the people of
 20 Puerto Rico, it should be submitted via the President to Congress for
 21 its approval. In addition, Public Law 600 repealed portions of the
 22 Jones Act of 1917, the basic federal law governing Puerto Rico, and
 23 renamed the remainder, the Puerto Rican Federal Relations Act.

24 1. In 1946, Governor Tugwell vetoed three bills which were passed
 25 over his veto by the Puerto Rican legislature and were
 26 consequently submitted to the President who upheld the Governor.
 27 One of the bills provided for the use of Spanish as the language
 28 of instruction in public schools, another for a plebiscite in
 29 which the people of the island would express their preference
 30 for independence, statehood or dominion status and the third
 31 provided a poll amongst qualified voters in each of the popular
 32 parties which would submit the names of its candidates for
 33 office of governor. Governor Tugwell had vetoed the bills on
 the ground that they related to the island ultimate status.
Forty-sixth Annual Report of the Governor of Puerto Rico, 1946,
 pp. 4-5; White House press releases of May 18 and October 26,
 1946.

2. 64 Stat 319, July 3, 1950.

1 The people of Puerto Rico did vote and approved the law.
2 A constitution was drafted, approved, and submitted to Congress
3 which; in Public Law ¹447, approved it conditional upon the following
4 changes: (1) deletion of a provision patterned after the United
5 Nations' Universal Declaration of Human Rights recognizing the right
6 to work, obtain an adequate standard of living, and social protection
7 in old age or sickness; (2) addition of a provision assuring continu-
8 ance of private elementary schools; and, (3) addition of a provision
9 requiring that amendment to the Puerto Rico Constitution must be
10 consistent with United States Constitution, the Puerto Rican Federal
11 Relations Act, and Public Law 600. All three changes required by the
12 Congress were made by Puerto Rico and approved by the Puerto Rican
13 Constitutional Convention and later by another referendum.

14 It should be noted that this legal activity in 1950-1952 was
15 undertaken with the maximum degree of formality and ceremonial solem-
16 nity in both Puerto Rico and the United States. Officials both in
17 Puerto Rico and in the United States were aware that what was taking
18 place was a significant alteration in the relationships between Puerto
19 Rico and the United States.² This information was clearly transmitted
20 to the Puerto Rican people in the debates and referenda during this
21 period. All of the major parties and political leaders in Puerto Rico
22 analysed, argued, discussed and urged a position on the new Constitution
23 and the Commonwealth.

24 When the time came to draft the Constitution, the Puerto Rican
25 people went to considerable length to obtain the best talent available
26 to assist them in drafting it. The list of consultants from the

27
28 1. 66 Stat. 327, July 3, 1952.

29 2. This was partly reflected in the fact that in Puerto Rico
30 the process of approving the Constitution was attended by
31 violence from October 30-November 6, 1950, in various parts
32 of the island resulting in approximately 28 persons killed
33 and 49 wounded. The Nationalist Party, a small minority of
the population advocating independence, also stimulated
violence on the mainland which resulted in the attempted
assassination of President Truman on November 1, 1950.

1 mainland and elsewhere who were asked to bring to bear their abilities
 2 in drafting a new Constitution for Puerto Rico included some of the
 3 leading constitutional lawyers and theorists in the world. There is
 4 at least one excellent book of commentaries which considers in depth
 5 the many issues with which the Puerto Ricans concerned themselves.

6 Similarly, the debates both in Congress and in Puerto Rico
 7 explored at great length the consequences of this procedure and the
 8 formation of a Puerto Rican government under its own Constitution.
 9 Hypothetical legal questions were posed which reached into the farthest
 10 corners of international and constitutional law where no one could
 11 speak with sureness and time was the only factor which could determine
 12 the problem with certainty. For example, many questioned the division
 13 of power between Puerto Rico and the federal government under Common-
 14 wealth comparing it with Statehood. To some it seemed that under
 15 statehood this allocation of power was clear and under Commonwealth
 16 it was uncertain.

17 The fact is, however, that the problems of federal-state power
 18 allocation have been evolving since the time of the founding of the
 19 Republic and recent years have indicated the uncertainty and instabil-
 20 ity from a legal point of view in many areas of this relationship. In
 21 short, a federal relationship--whether it be Commonwealth or Statehood--

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- 22
- 23 1. University of Puerto Rico, School of Public Administration,
 24 La Nueva Constitucion de Puerto Rico (1954).
 - 25 2. The Congressional hearings and debates are reported in House
 26 of Representatives, Hearings Before the Committee on Public
 27 Lands on H.R. 7674 and S. 3336 (July 12, 1949, March 14, May
 28 16, June 8, 1950) (81st Cong.); House of Representatives,
 29 Hearings Before the Committee on Interior and Insular Affairs
 30 on H.J. Res. 430 (April 25, 1952) (82nd Cong.) U.S. Senate,
 31 Hearings Before a Subcommittee of the Committee on Interior
 32 and Insular Affairs on S. 3336 (May 17, 1950) (81st Cong. 2nd
 33 Sess.); U.S. Senate, Hearings Before the Committee on Interior
 and Insular Affairs on S.J. Res. 151 (April 29, May 6, 1952)
 (82nd Cong. 2nd Sess.); and the 96th and 98th volumes of the
 Congressional Record, passim.
 3. Commonwealth of Puerto Rico, Diario de Sesiones de la
 Convencion Constituyente de Puerto Rico (4 vols. 1961 ed.)
passim.

1 is never completely clear. Rather there is a necessary and desirable
2 obscure fringe area which permits many legal, political and practical
3 adjustments to take place. It is true that Commonwealth has many
4 areas of uncertainty because it is novel. But it is also true that
5 Commonwealth like Statehood has many areas of uncertainty because of
6 the nature of a federal relationship.

7 These questions as to the precise legal consequences under
8 various hypothetical circumstances arose only because of the agreement,
9 both in the Congress and in Puerto Rico, that an extraordinary event
10 which was going to transform the Puerto Rico-mainland relationship was
11 then taking place. To note just a few of these changes is to indicate
12 the magnitude of that which has occurred. Thus, Puerto Rico now elects
13 its own Governor, elects its own legislature, appoints its own judges,
14 appoints all its cabinet officials and all other lesser officials in its
15 executive branch, sets its own educational policies, determines its own
16 budget, and amends its own civil and criminal code. All of this is done
17 without participation by, concurrence of, or even information submitted
18 to, any federal officials. No one in the Puerto Rican or Federal
19 Government, either in the legislative or executive branch, has indicated
20 that these conditions should change and that what has in fact occurred
21 should not continue to be the situation. No one in the Puerto Rican or
22 the Federal Government has suggested that power granted to Puerto Rico
23 in 1950-1952 should be diminished or subordinated or that there should
24 be a return to the previously existing situation.

25 The legal problems then arise in a situation where doctrinal
26 argumentation rather than practical concern calls most loudly for their
27 immediate resolution. It is the practical problems which arise,
28 however, which will effect their ultimate resolution. This will take
29 place slowly, bit-by-bit, as the executive, judicial and legislative
30 branches of both the Federal and Puerto Rican Governments continue to
31 act, to discuss, and to respond to problems as they arise.

32 What then are the legal issues which are of primary concern
33 between Puerto Rico and the United States at present which will require

1 resolution? The one which has been most debated in Puerto Rico is
 2 the issue of the compact: the question of whether the 1950-1952
 3 legislation resulted in a relationship which could not be changed
 4 without the consent of either party.

5 The legal issue of the compact may be broken down as follows:

- 6 1. Does Congress have the power to enter into
 such a compact with Puerto Rico?
- 7 2. Assuming arguendo, it did have the power,
 8 did Congress exercise this power when it
 passed Public Law 600 and, if so, what are
 9 the terms of the agreement?

10 Since these issues have been so frequently discussed, at times
 11 rather confusingly, perhaps it would be well at this point to explore
 12 briefly the legal arguments with respect to these questions.

- 13 1. Does Congress have the power to enter into such a compact
 14 with Puerto Rico?

15 The sources of Congressional power with respect to
 16 territories derive from (a) the territorial clause of the Constitution,
 17 Article IV, Section 3, Clause 2, which states "The Congress shall power
 18 to dispose of and make all needful rules and regulations respecting
 19 the Territory or other property belonging to the United States. . ."
 20 and (b) the inherent and implied powers of the national government.

21 The argument in favor of compact is that the power
 22 stemming from both of these sources is extremely broad and includes
 23 the power to make contracts with territories. Compact advocates cite
 24 cases where the United States Congress has contracted with its citizens

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- 25 1. With respect to Puerto Rico, the issue may also be affected
 26 by the Treaty of Paris.
 - 27 2. Perry v. United States, 294 U.S. 330 (1935). (Congress could
 28 not change obligation imposed by gold clause in United States
 Government bonds. Although obligation upheld, citizen did
 29 not prove damage and, therefore, accorded no remedy); Lynch v.
 30 United States, 292 U.S. 571 (1934) (Congress could not abrogate
 war risk insurance contracts authorized by previous Congress
 and already entered into.)

1 and even with its territories, most notably with the Territory of
 2 Minnesota, the Territory of Wisconsin and the Northwest Territory.

3 The opponents of compact agree that the sources of
 4 Congressional power arise from the territorial clause of the Constitu-
 5 tion and the implied powers of the national government, both of which
 6 are quite broad in scope. This very breadth, however, they state,
 7 permits the Congress at any time to modify legislation previously
 8 adopted for a territory. They argue, citing cases, that although
 9 Congress may delegate powers to a territorial government, the broad
 10 powers granted to Congress under the Constitution remain and may be
 11 exercised should the need arise. They distinguish the cases cited by
 12 compact supporters and noted above stating they treat of proprietary
 13 rather than political rights.

-
- 14
- 15 1. Sterns v. Minnesota, 179 U.S. 223 (1900). (Court held Minne-
 16 sota could not tax R.R. land other than on gross receipts
 17 because it would impair contract with railroad created by
 18 prior state legislation and would violate compact entered
 19 between United States and Minnesota created by Enabling Act
 20 and Constitution of the State).
 - 21 2. Beecher v. Weatherby, 95 U.S. 517 (1877). (Court held title
 22 to given land in defendant since defendant obtained land from
 23 State. The State had received it by virtue of compact entered
 24 into between U. S. and Wisconsin created by Enabling Act and
 25 admission statute passed by Congress. Congressional attempt
 26 to subsequently dispose of land, therefore, invalid.)
 - 27 3. Sec. 14, Ordinance of 1787; Pollard v. Kibbe 39 U.S. (14 Pet.)
 28 351, 417-418 (1840). (After treaty with Spain but before U.S.
 29 gained possession, Spanish governor transferred land to
 30 Pollard contrary to previous transfer, prior to treaty, by
 31 Spanish government to Forbes & Co. Congress said to have con-
 32 firmed transfer to Pollard. Ct. referred to Northwest Ordinance
 33 as "solemn and mutual compact" under which Congress could
 authorize title in Pollard.); Scott v. Detroit Young Men's
 Society's Lessee. 1 Doug. 119 (Mich. 1843) (Prior to formal
 admission as a State but after organization pursuant to the
 Northwest Ordinance Michigan authorities granted in the name
 of the State an association charter. Ct. held this grant
 valid since people of Michigan had right to organize as State
 pursuant to the Northwest Ordinance.) The Ordinance of 1787
 is discussed extensively noting cases which would tend to
 support and reject the compact thesis in Haight, The Ordinance
 of 1787 2 Mich. Pol. Sci. Ass'n. 343 (1897).
 4. First National Bank v. Yankton County, 101 U.S. 129, 133 (1879).
 (Bonds issued by territory of Dakota held valid because of Act
 of Congress which has power to repeal, modify, or validate act
 of territorial legislature); Murphy v. Ramsey, 114 U.S. 15, 44
 (1885). (Court upheld Act of Congress abridging right to vote
 of those practicing polygamy in Territory of Utah even though
 contrary to territorial legislation).

1 The examination of this problem has been very care-
 2 ful. Extensive hearings have been held in Puerto Rico in which the
 3 views of the most eminent members of the Puerto Rico Bar were heard
 4 on this issue. For example, the Puerto Rico Bar Association in its
 5 own examination of the question indicated the difficulty of a certain
 6 response and argued that the solution revolved around the problem of
 7 sovereignty, which either totally or partially, should be transferred
 8 to Puerto Rico.¹ The Puerto Rico Anti-Colonialist Congress similarly
 9 analyzed the legal problem in term of sovereignty, emphasizing the
 10 continued exercise of various powers by the Federal Government which
 11 they felt prevented a meaningful bilateral relationship with the terms
 12 of the United Nations' definition.² Others were less concerned with
 13 the issue of sovereignty and discussed specific aspects of
 14 Commonwealth which indicated a bilateral relationship.³ In addition,
 15 the Status Commission had the benefit of a Legal Consultative Committee,
 16 composed of leading lawyers and academicians in both Puerto Rico and
 17 the mainland who addressed themselves to these problems.

18 The conclusion reached is that the national government
 19 has the power to provide to its citizens a form of government and a
 20 participation in its own affairs in accordance with their desires.
 21 The entire history of the United States territorial relationship and
 22 the federal-government-citizen relationship sustain innovation and
 23 change in accordance with needs. We can see no constitutional bar to
 24 prevent Congress under the existing Constitution of the United States from
 25 entering into innovative forms of relationships within the federal
 26 structure--including a binding relationship--in order to meet the needs
 27 and desires of the Puerto Rican people.

- 28 _____
- 29 1. Stacom Hearings _____.
- 30 2. Stacom Hearings _____.
- 31 3. Stacom Hearings _____.

32
 33

- 1 2. Assuming arguendo, it did have the power, did Congress
2 exercise this power when it passed Public Law 600 and,
3 if so, what are the terms of the agreement?

4 Advocates of compact rely primarily on (a) the words
5 of the statute (b) the procedure required by the statute; and, (c) the
6 subsequent actions by the Executive branch before the United Nations
7 and the Congress in certain instances.

8 If Congress intended nothing but another Organic Act
9 why did it say "in the nature of a compact" in Public Law 600, and,
10 in the preamble to Public Law 447, refer to Public Law 600 as a
11 "compact"? In addition, the procedure set up by Public Law 600--a
12 referendum, the drafting of the Constitution, another referendum in
13 Puerto Rico, and subsequent approval by Congress of the Constitution--
14 is similar to the procedure often followed when territories become
15 states or, as in the case of the Philippines, become independent. In
16 those cases Congress frequently used the word "compact," as it did
17 here, and indicated that the conditions imposed by Congress permitting
18 the territory to draft the Constitution are binding in both the terri-
19 tory and the national government. Thus, the advocates of compact
20 argue, the language of the statute and the procedure adopted were
21 associated in the Congressional mind with a permanent change of status
22 and was the intention here.

23 After the approval by Congress and the people of Puerto
24 Rico of the Puerto Rican Constitution, the United States advised the
25 United Nations that it would no longer report with respect to Puerto
26 Rico under Article 73(e) of the United Nations Charter since Puerto
27 Rico was now a self-governing territory.
28

29 The characterization of the status of Puerto Rico
30 was as follows:

31 "Congress has agreed that Puerto Rico
32 shall have under that constitution freedom
33

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- 34 1. Memorandum by the Government of the United States of America
35 concerning the Cessation of Transmission of Information Under
36 Article 73(e) of the Charter with regard to the Commonwealth
37 of Puerto Rico. Annex II of U.N. Dec. A/AC. 35/L. 121, p. 8.
38 "United States mission to the United Nations," Press Release
39 No. 1741, Aug. 28, 1953, p. 2.

1 from control or interference by the
2 Congress in respect of internal
3 government and administration subject
4 only to compliance with applicable
5 provisions of the Federal Constitution,
6 the Puerto Rican Federal Relations Act,
7 and the acts of Congress authorizing
8 and approving the constitution as may
9 be interpreted by judicial decision.
10 Those laws which directed or authorized
11 interference with matters of local
12 government by the Federal Government
13 have been repealed." 1

14 Mr. Mason Sears, U. S. Representative in the Committee
15 on Information from Non-Self-Governing Territories, was even more
16 emphatic:

17 "A most interesting feature of the
18 new constitution is that it was entered
19 into the nature of a compact between the
20 American and the Puerto Rican people. A
21 compact, as you know, is far stronger than
22 a treaty. A treaty usually can be
23 denounced by either side, whereas a compact
24 cannot be denounced by either party unless
25 it has the permission of the other. This
26 point has been particularly emphasized by
27 Senator Butler of Nebraska who was a principal
28 cosponsor of Public Law 600.
29 Senator Butler has gone on record to the
30 effect that the Commonwealth of Puerto
31 Rico has been created by a compact which
32 may not be amended or abrogated by either
33 side alone. In addition to Senator
34 Butler's statement, we have a ruling from
35 the United States District Court for Puerto
36 Rico, which is a United States court and
37 not a Puerto Rican court." 2

38 The United States action was approved by the United
39 Nations General Assembly.

40 In addition, in three cases the Congress has passed
41 laws affecting Puerto Rico and has made the enactment conditional upon

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- 42 1. Memorandum by the Government of the United States of America
43 concerning the Cessation of Transmission of Information Under
44 Article 73(e) of the Charter with regard to the Commonwealth
45 of Puerto Rico. Annex II of U. N. Doc. A/AC. 35/L. 121, p. 8.
 - 46 2. "United States mission to the United Nations," Press Release
47 No. 1741, Aug. 28, 1953, p. 2.

1 express consent by the legislature of Puerto Rico.

2 The opponents of compact argue primarily from the
3 legislative history of the statute itself. They first state there is
4 a significant difference between the phrase "in the nature of a compact"
5 used in Public Law 600 and the word "compact" used in Public Law 447
6 and the wording normally used when a territory becomes a state which
7 has been held to create a "compact": "by ordinance irrevocable with-
8 out the consent of the United States and the people of said State."²

9 Not only, they say, did Congress not use the appro-
10 priate statutory language but the legislative history confirms that
11 no change in status was intended. They cite primarily the committee
12 reports which followed the letter comment of the Secretary of Interior
13 on the bill.

14 "The bill under consideration would
15 not change Puerto Rico's fundamental,
16 political, social and economic relation-
17 ship to the United States. . . . This
18 bill does not commit the Congress,
19 either expressly or by implication, to
20 the enactment of statehood legislation
21 for Puerto Rico in the future. Nor
22 will it in any way preclude a future
23 determination by the Congress of Puerto
24 Rico's ultimate political status."³

25 In addition, they note the statements of Commonwealth
26 representatives before the committee:

27 "As already pointed out, H. R. 7674
28 would not change the status of the island
29 of Puerto Rico relative to the United
30 States. It would not commit the United

-
- 31 1. 72 Stat. 1375, 26 USCA 5314 (tax on distilled spirits); 70
32 Stat. 572, 26 USCA 4774 (tax on narcotic drugs and marihuana),
33 but see Valpais v. U. S. 289 F. 2d 607 (CA 1 1961) (Act held
applicable to Puerto Rico prior to consent); 75 Stat. 245
(Joint Resolution eliminating limitation on amount of Common-
wealth bonded indebtedness). See also Rep. No. 2174 (84th
Cong. 2d Sess. 1956). (Puerto Rico consent obtained prior to
passage of continuation of processing tax on refined sugar).
2. E.g. Utah Enabling Act, Act of July 16, 1894, 28 Stat. 107;
Minnesota Enabling Act, Act of February 26, 1857, 11 Stat. 166.
3. H. Rept. No. 2275, 81st Cong., 2nd Session, p. 3; see also
S. Rept. No. 1779, 81st Cong., 2nd Session, p. 3.

1 States for or against any specific
2 future form of political formula for
3 the people of Puerto Rico. It would
4 not alter the powers of sovereignty
5 acquired by the United States over
6 Puerto Rico under the terms of the
7 Treaty of Paris." ¹

8 ". . . Mr. Chairman, I would like
9 to make two comments: One, there
10 would always be the way open to any-
11 body who found an amendment to the
12 Constitution went beyond the framework
13 laid down by Congress, the right to go
14 to the courts; and, secondly, the
15 authority of the Government of the
16 United States, the Congress, to
17 legislate in case of emergency would
18 always be there." ²

19 Opponents of compact also argue that subsequent execu-
20 tive action in the United Nations cannot create legislative intent. In
21 any event, the issue, they say, whether a territory is self-governing
22 or non self-governing territory for the purposes of Article 73(e) of
23 the United Nations' Charter is not relevant to the issue of compact.

24 Further, although there have been three cases where
25 Congress adopted laws requiring the consent of Puerto Rico, there have
26 been many more cases where Congress has passed laws and the executive
27 branch has taken action substantially affecting Puerto Rico without
28 Puerto Rican consent.³

-
- 29 1. Statement of Dr. Fernos Isern, Hearings Before the Committee on
30 Public Lands, House of Representatives, 81st Congress, on H.R.
31 7674 and S. 3336, p. 63.
- 32 2. Id. at p. 33. In addition, Ibid, Statement of Governor Munoz
33 Marin. See also the opinion of Irwin Silverman, Chief Counsel
of the Office of Territories, rendered to Sen. Malone, U. S.
Sen., Hearings Before the Committee on Interior and Insular
Affairs, on S. J. Res. 151, pp. 40-45 (82nd Cong. 2nd Session).
Congressman Meader introduced a specific amendment on this
point which was rejected although the grounds for its defeat
are unclear. 98 Cong. Rec. 6203, 7848.
- 34 3. E.g. In the two tax statutes cited above, other sections of
35 the same statute did not request Puerto Rican consent. Presum-
36 ably Congress intended them to become valid with respect to
37 Puerto Rico when passed. See also amendment by Congress of
38 Sec. 9 of Puerto Rican Federal Relations Act (Philippine Trade
39 Agreement Revision Act of 1955, 69 Stat. 427) and changes in
40 estate and gift tax provisions re Puerto Rican residents (72
41 Stat. 1674, 26 USCA 2208, 2501).

1 on the issue. A number of cases which have discussed this issue tan-
2 gentially are noted in the footnote.¹

3 The nature of the question and the nature of the
4 judicial process is such, however, that the broad issue is unlikely to
5 be raised, much less, answered, for many, many years. The interpretation
6 of a given law or the consequence of certain executive action in certain
7 situations may give rise to a judicial decision which will assist in the
8 resolution of the particular issue, but the larger questions will probably
9 continue unresolved for some time.

10 Although only the Supreme Court can definitively decide
11 the existing legal situation, some tentative conclusions may be put for-
12 ward here.

13 There is no question that the 1950-52 legislation was
14 intended to bring about a significant change in the previous relation-
15 ship. The status represented by the prior Organic Acts was considered
16 to be unsatisfactory by both Puerto Rico and the Federal Government.
17 The 1950-52 legislation was directed toward accomplishing changes of
18 fundamental importance which would give rise to a bilateral relation-
19 ship and maximum participation by the people of Puerto Rico in the
20 governmental processes which effect Puerto Rican life. Pursuant to this
21 legislation Puerto Rico organized its own government with its powers
22 arising from a constitution drafted by the people of Puerto Rico. This
23 significant political change and the subsequent evolution of United States-
24 Puerto Rico affairs substantially altered the factual background of
25 United States-Puerto Rico relations. The factual change was of sufficient
26 substance that it brought with it permanent legal consequences although
27 the record does not make clear their precise character.

29 1. Mora v. Torres 113 F Supp. 309 (D.P.R. 1953); In the matter
30 of Hilton Hotels, Inc. 37 L.R.R.M. 474 (P.R.L.R.B. 1955);
31 Figueroa v. Puerto Rico 232 F.2d 615 (CA 1 1956); R.C.A. v.
32 Gobierno de la Capitol (Sup. Ct. of Puerto Rico, Nov. 17,
33 1964); U.S. v. County Board of Elections of Monroe County
248 F. Supp. 316 (E.D.N.Y. 1965); Morgan v. Katzenbach 247
F. Supp. 196 (D.C.D.C. 1965) rev'd _____ v. _____
(June 13, 1966). See also cases cited f.n. 1, p. 20, infra.

1 The exact legal character and bounds of this bilateral
2 relationship, the precise participation permissible under the existing
3 arrangement as a matter of fact and law varies depending on the
4 circumstances and admits of no sweeping generalization. In matters
5 affecting the national security of the mainland United States the
6 participation by Puerto Rico will clearly be evidenced in a different
7 way and to a different degree than if the subject matter were taxation
8 of profits earned by mainland companies in Puerto Rico. Similarly,
9 whether legislative or executive action is involved or whether the
10 initiative rests in a particular case with the Federal or Puerto
11 Rican Government will effect the matter considerably. In sum, the
12 precise allocation of powers between the Puerto Rican Government and
13 the Federal Government is a matter subject to determination only on
14 the basis of the individual analysis of each area of governmental
15 activity.

16 The bilateral character of the arrangement is most
17 clear where the basic governmental structure of the Commonwealth is
18 concerned. Here the procedure adopted indicates an intention not to
19 change this without the consent of the Puerto Rican people. There
20 may also be other areas involving the essential components of the
21 association which are intended to be so covered. This should not
22 be understood to mean that all federal legislation and power over
23 Puerto Rico was frozen in the exact molds in which that legislation
24 was cast when the Commonwealth was established in 1952, and that such
25 federal legislation may not be changed in any respect without formal
26 Puerto Rican consent. On the contrary, there are in effect two
27 spheres of power: the Congressional power and the power of the
28 government of Puerto Rico which arises from the fact that the govern-
29 ment was created by the people of Puerto Rico. Within each sphere
30 there are areas in which each government is free to act without
31 consultation of the other government and without impinging on the
32 principle against unilateral amendment where the fundamental governmental
33 character of Commonwealth is concerned.

1 Further, the Congress should be responsive as it
 2 has in the past when the people of Puerto Rico in the future indicate
 3 the desirability of a change in the basic arrangement which has been
 4 concluded. Until that time, the Federal Government should act so as
 5 to maximize the participation by Puerto Rico in cases where the island
 6 will be effected by Federal Government action. This is consistent
 7 with the intent of 1950-52 legislation and is in the best interests
 8 of both the Federal and Puerto Rican Governments.

9 2. Applicable Constitutional Provisions:

10 The present legal relationship of Puerto Rico to the United
 11 States is the result of the applicability of various constitutional
 12 provisions and federal laws to Puerto Rico.

13 The question of what United State Constitutional provisions
 14 apply to Puerto Rico is unclear.¹ This lack of clarity results histor-
 15 ically from the doctrine of "unincorporated" and "incorporated"
 16 territories set forth in the Insular Cases.² This doctrine holds that
 17 there is a difference between territories which are incorporated and
 18 those that are not and that this difference brings with it significant
 19 legal consequences. To incorporated territories the Constitution
 20 applies fully; to an unincorporated territory, only the fundamental
 21 provisions of the Constitution applied, "the general prohibitions. . .
 22 in favor of the liberty and property of the citizen. . .which are an
 23 absolute denial of authority. . .to do particular acts." Downes v.
 24 Bidwell, supra, at 294.

25
 26 1. It should be noted at this point that compact advocates argue
 27 that Puerto Rico no longer is governed by the territorial
 28 clause, and therefore, it is no longer an unincorporated
 29 territory. "Puerto Rico, as declared by the United States
 30 before the United Nations in 1953 and reaffirmed in 1959, has
 31 also stepped up from being a territory (an unincorporated
 32 territory) to the dignity of being an Associated State."
 33 Speech of Gov. Munoz Marin, June 3, 1959. The precise U. S.
 Constitutional provisions which apply under compact are
 unclear.

2. De Lima v. Bidwell 182 U.S. 1 (1901); Downes v. Bidwell 182
 U.S. 244 (1901); Dooley v. U.S. 182 U.S. 222 (1901);
Armstrong v. U.S. 182 U.S. 243 (1901).

1 Quite naturally, subsequently a number of cases arose
 2 testing whether a given provision of the Constitution was so funda-
 3 mental that it applied to an unincorporated territory such as Puerto
 4 Rico.

5 The Fifth Amendment requirement of indictment by grand
 6 jury and the Sixth Amendment requirement of trial by jury have
 7 specifically been held not to apply to Puerto Rico.¹ In addition the
 8 uniformity provision in Article I, Section 8 has been held not appli-
 9 cable.² The Constitutional restrictions upon a State of the Union with
 10 respect to the regulation of interstate and foreign commerce (Art. I,
 11 Sec. 8, Cl. 3) and prohibition upon the levying of duties or imposts
 12 on imports (Art. I, Sec. 10, Cl. 2) were held not to apply to Puerto
 13 Rico prior to Public Law 600.³ Due process is the only constitutional
 14 requirement specifically held to be applicable to Puerto Rico although
 15 whether it is the Fifth or Fourteenth Amendment is not clear.⁴

16 The Sixth Amendment right to confrontation of witnesses,
 17 the Seventh Amendment right to trial by jury in common law cases, and,
 18 probably, the Fifth Amendment right against double jeopardy and the
 19 First Amendment protection against bills of attainder or ex post facto
 20 laws are not applicable to unincorporated territories.⁵ The Fourth
 21 Amendment protection against unreasonable search and seizure, the right
 22

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- 23 1. Porto Rico v. Tapia 245 U.S. 639 (1918); Balzac v. Porto Rico
 24 258 U.S. 298 (1922).
 25 2. Downes v. Bidwell 182 U.S. 244 (1901).
 26 3. Buscaglia v. Ballester 162 F.2d 805 (CA 1 1947); cert. den.
 27 332 U.S. 816 (1947).
 28 4. Mora v. Mejias 206 F.2d 377 (CA 1 1953); Colon Rosich v. Puerto
 29 Rico 256 F.2d 393 (CA 1 1958).
 30 5. Dowdell v. U.S. 221 U.S. 325 (1911); Puerto Rico v. Shell Co.
 31 (P.R.) Limited, et al 302 U.S. 253 (1937); Grafton v. U.S. 206
 32 U.S. 333 (1907); Kepper v. U.S. 195 U.S. 100 (1904); Downes v.
 33 Bidwell 182 U.S. 244, 277 (1901).
 6. Best v. United States 184 F.2d 131, 138 (CA 1 1950).

1

1 to the writ of habeas corpus in Art. 1, Sec. 9, Cl. 2 and the Fifth
 2 Amendment right to just compensation quite likely to apply to unin-
 3 corporated territories.

4 The continued applicability of the doctrine of unincorpo-
 5 rated v. incorporated territories to Puerto Rico is questioned by
 6 compact advocates and the continuing vitality of the distinction has
 7 been questioned by the Supreme Court in recent cases. It should also
 8 be noted that the doctrine was formulated prior to the grant of United
 9 States citizenship to Puerto Rico. Although the grant in 1917 of
 10 federal citizenship to Puerto Rico did not affect the doctrine's
 11 applicability to Puerto Rico, the expansion of the rights of federal
 12 citizens in recent years suggests that the judiciary will not rely as

14 1. Eisentrager v. Forrestal 174 F. 2d 961, 965 (CADC 1949).

15 2. Mitchell v. Harmony 54 U.S. (13 How.) 115, 133 (1852); Turney
 16 v. U.S. 115 F. Supp. 457, 464 (U.S. Ct. of Cl. 1953).

17 3. Reid v. Covert 354 U.S. 1, 14 (1957).

18 4. It is still a moot question whether persons born in Puerto
 19 Rico were, from the time of Puerto Rico's acquisition by the
 20 United States, natural born United States citizens under the
 21 Constitution regardless of Congressional action. United States
 22 v. Wong Kim Ark 169 U.S. 649 (1898). The question was raised
 23 but avoided by the Supreme Court when it held that an inhabitant
 24 of Puerto Rico was not an alien for the purpose of the immi-
 25 gration laws in force at that time. Gonzalez v. Williams, 192
 26 U.S. 1 (1904).

27 5. The constitutional rights of federal citizenship appear to be
 28 the following: the right to travel freely throughout the
 29 United States, the right to demand federal protection and care
 30 of life and property, the right to peaceably assemble and
 31 petition for redress of grievances, the privilege of the writ
 32 of habeas corpus, right to use navigable waters, rights gained
 33 by virtue of treaties with foreign powers Slaughterhouse Cases
 83 U.S. (16 Wall.) 36, 79-80 (1873) the right to access to the
 offices of the federal government and the federal courts
Crandall v. Nevada 73 U.S. (6 Wall.) 35, 43-44 (1868). See
 also the concurring opinion of Justice Douglas in Bell v.
Maryland 378 U.S. 226, 250 (1964) expressing the view that the
 privileges and immunities of federal citizenship should be
 increased; specifically, to include the right to be afforded
 public accommodations without discrimination.

6. Balzac v. Porto Rico 258 U.S. 298 (1922); Fournier v. Gonzalez
 269 F. 2d 26 (C.A.1 1959).

7. Kinsella v. Singleton 361 U.S. 234 (1960); cf. Morgan v. Katzen-
bach 247 F. Supp. (D.C. 1965) cert. granted U.S.
 and U.S. v. Monroe County 248 F. Supp. 316 (E.D. N.Y. 1965).

1 heavily as before on the doctrine in determining the constitutional
2 rights of United States citizens living in Puerto Rico.

3 3: Applicability of Federal Laws:

4 The lack of clarity concerning the applicability of federal
5 laws to Puerto Rico arises from (a) the interpretation of the effect of
6 the 1950-1952 legislation; (b) section 9 of the Puerto Rico Federal
7 Relations Act that provides "statutory laws of the United States not
8 locally inapplicable. . . shall have the same force and effect in Puerto
9 Rico as in the United States. . ." and (c) in many cases the obscure
10 language of the particular federal statute involved. The question of
11 the effect of the 1950-1952 legislation on the applicability of
12 federal law has been considered in a number of cases without a clear
13 rule emerging. The effect of the "not locally inapplicable" language
14 in a particular case is also frequently unclear.

15 The result is a series of Congressional and administrative
16 actions in connection with Puerto Rico without any consistent approach
17 and in some cases without any apparent relationship to local needs.
18 In many cases, Puerto Rico is treated in the same fashion as a state
19 of the union; in other cases, Puerto Rico is treated differently from
20

21 1. 48 U.S.C. 734. (Emphasis supplied.)

22 2. (Diversity jurisdiction) Detres v. Lions Bldg. Co., 234 F. 2d
23 596 (CA 7, 1956) rev. 136 Supp. 699 (N.D. Ill. 1955); Lopez v.
24 Resort Airlines 18 F.R.D. 37 (S.D. N.Y. 1955); In re Lummus &
25 Commonwealth Oil Refining Co., Inc. 195 F. Supp. 47 (S.D. N.Y.
26 1961); clarified by statutory amendment. 70 Stat. 658 (July
27 26, 1956); (Federal Firearms Act) U.S. v. Rios, 140 F. Supp.
28 376 (D.P.R. 1956); (Three-judge court) Mora v. Mejias, 115 F.
29 Supp. 610 (D.P.R. 1953); (Smith Act) Carrion v. Gonzalez, 125
30 F. Supp. 819 (D.P.R. 1954); U.S. v. Carrion, 140 F. Supp. 226
31 (D.P.R. 1956); (General conspiracy statute) Arbona v. Kenton,
32 126 F. Supp. 366 (S.D. N.Y. 1954); (The Taft-Hartley Act)
33 Cosentino v. Ila, 126 F. Supp. 420 (D.P.R. 1954); U.S. v.
Mejias, 131 F. Supp. 957 (D.P.R. 1955); but see Hilton Hotels
International, Inc. d/b/a/ Caribe Hilton Hotel and Local 24918,
Union de Trabajadores de la Industria Gastronomica y Ramas
Anexas de P.R. 37LRM1474 (PR LRB 1955); (The Fair Labor
Standards Act) Mitchell v. Rubio, 139 F. Supp. 379 (D.P.R. 1956);
(Narcotics Drugs Import and Export Act and the Marihuana Tax Act)
Moreno Rios v. U.S., 256 F. 2d 68 (CA I 1958); Sanchez v. U.S.,
256 F. 2d 73 (CA I. 1958).

3. Granville-Smith v. Granville-Smith, 349 US1, 17 (1955).

1 the states. For example, United States income laws make a special
 2 exception for those individuals and corporations who are residents
 3 in Puerto Rico and receive income from Puerto Rican sources. If
 4 certain conditions are fulfilled, this Puerto Rican source income
 5 is not taxed at all to these residents. Similarly, Puerto Rico is
 6 treated specially for the purposes of the Fair Labor and Standards
 7 Act and is specifically exempted from the jurisdiction of the Inter-
 8 state Commerce Commission. Similarly, under the various federal
 9 poverty and grant-in-aid programs, Puerto Rico is treated in some
 10 cases like a state, in other cases quite uniquely: sometimes to its
 11 benefit, in others, to its detriment. Again the United States District
 12 Court in San Juan has slightly different jurisdiction than other
 13 federal district courts, and the federal district judges in Puerto Rico
 14 are treated slightly less advantageously. Some laws are sufficiently
 15 unclear so that they have resulted in litigation or have litigation
 16 pending.

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- 18 1. Domestic corporation doing business in Puerto Rico may also
 19 receive these benefits. The key sections of the Internal
 20 Revenue Code are sections 931 and 933. The subject is
 21 treated comprehensively in Mihaly, Tax Advantages of Doing
 Business in Puerto Rico 16 Stan. L. Rev. 75 (1963) and Novak,
A New Appraisal of Puerto Rico in Light of Recent Tax Legis-
lation 19 Tax L. Rev. 209 (1964).
 - 22 2. 29 U.S.C. 201-209.
 - 23 3. 48 U.S.C.A. 751.
 - 24 4. 78 Stat. 508 (Poverty program); 79 Stat. 27 (Elementary and
 25 Secondary Education Act of 1965); 42 U.S.C.A. 303 (a) (Old Age
 26 Assistance); 42 U.S.C.A. 291 (b) (Hospital construction
 27 assistance).
 - 28 5. 48 U.S.C.A. 863.
 - 29 6. 28 U.S.C.A. 134; 28 U.S.C.A. 373; cf. 28 U.S.C.A. 371.
 - 30 7. E.g. Securities and Exchange Commission v. Wong et al. (Puerto
 31 Rico Capital Corp.) (D.P.R. April 6, 1966).
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33

1 The above indicates the desirability from time to time of
2 Puerto Rican and federal officials being called together to discuss
3 specific areas of uncertainty or concern so that the dialogue between
4 Puerto Rican and Federal Governments may be continued in a useful and
5 meaningful way.

6
7 C. Legal Aspects of Prospective Change

8 It should be noted that the following discussion is limited to
9 legal issues only. The likelihood of any arrangement either as a tran-
10 sition measure or under an improved or different status involves a
11 high degree of political speculation and is outside the scope of this
12 discussion.

13 1. Commonwealth

14 Proposals to improve and develop the Commonwealth
15 would not appear to give rise to serious legal or constitutional
16 problems. It is believed that, consistent with due process, the
17 Federal Government and the Commonwealth may make such adjustments in
18 the existing laws and regulations governing their relationships as are
19 deemed appropriate.

20 2. Statehood

21 Prior to the accomplishment of Statehood, the present
22 flexibility that Puerto Rico enjoys may legally be continued. Thus,
23 transition measures which are contemplated may be enacted, limited
24 only by due process considerations. The present exception to the
25 Fair Labor Standards Act, the tax exemption, free access to the
26 mainland market, and an external tariff different from the mainland
27 United States could be available during any transition period prior
28 to Statehood.

29 After Statehood, Puerto Rico's external tariff would
30 have to be the same as the other states in the Union. Continued tax

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33 1. U.S. Art. 1, Sec. 8, Cl. 1 and Art. 1, Sec. 9, Cl. 6.

1 exemption under Statehood would raise serious constitutional questions
2 even though the word "taxes" is not repeated in the second or uni-
3 formity clause of Article 1, Section 8, Clause 1 of the United States
4 Constitution. On the other hand, special grant-in-aid and welfare
5 legislation, including the Fair Labor Standards exception, could
6 legally be made available after Statehood if the Congress made the
7 appropriate finding that this aid is necessary to the economic welfare
8 of Puerto Rico.

9 3. Independence

10 Proposals to lead Puerto Rico toward independence
11 would appear to have no serious legal or constitutional objection.
12 It is believed that, consistent with due process, the Federal Govern-
13 ment and Puerto Rico may make such adjustments in the existing laws
14 and regulations governing their relationships as is deemed appropriate.

15 After independence, the Federal Government may
16 legally enter into arrangements with Puerto Rico to permit tax benefits
17 and free access to the mainland market. This would, of course, have to
18 be done by treaty. In addition, Puerto Rico under independence would
19 be eligible for foreign aid funds available from the United States,
20 other nations, and international agencies.

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22 1. 2 Willoughby on the Constitution of the United States 683-694
23 (1929 2nd ed.) The origin of the uniformity clause is discussed
24 extensively in Knowlton v. Moore, 178 U.S. 41, 84-110 (1899).
25 Congressional taxing power under Art. 1, Sec. 8, Art. 1, Sec.
26 9, and the XVith Amendment is discussed in Pollock v. Farmers'
27 Loan and Trust Company, 157 U.S. 429 (1893); Flint v. Stone
28 Tracy Company, 220 U.S. 107 (1910); Billings v. United States,
29 232 U.S. 261 (1913); Brushaber v. Union Pacific Railroad
30 Company, 240 U.S. 1 (1915). The relationships of the equal
31 protection clause or its equivalent to these provisions is
32 discussed in LaBelle Iron Works v. United States, 256 U.S.
33 377, 392 (1920); Steward Machine Co. v. Davis, 301 U.S. 548,
584 (1936).

1. Translation of Conclusions and Recommendations (pp. 1-26)
2. Review of first 9 pages (Historical portion) of Appendix A.
3. Review of Appendix C.
4. General Review.