

**SECOND-CLASS HEALTH IN THE ABSENCE OF SELF-DETERMINATION
AND GOVERNANCE: THE EFFECT OF COLONIAL GOVERNANCE OVER THE
HEALTHCARE SYSTEM OF PUERTO RICO IN COMPARISON TO HAWAII AND
MASSACHUSETTS**

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ABSTRACT

Our purpose is to present a comparative analysis between Puerto Rico, Hawai'i, and Massachusetts to examine the effect of democratic governance and self-determination over healthcare structures. We offer a historic perspective of the effects of the colonial status of Puerto Rico. By examining the way governing colonial status in Puerto Rico impacts the healthcare system, we demonstrate how its subjugation infringes upon the wellbeing of its inhabitants. We analyze Puerto Rico's colonial status as a fundamental cog in the intersections that have produced its economic and political failures when we discuss the impact of these shortcomings on the health and overall well-being of the population, based on the archipelago's healthcare finances and infrastructure. We present how the lack of governance and self-determination in a colonial state can undermine efforts to protect public health and healthcare delivery. Although we compare the response of all three states to the current global pandemic, COVID-19, this analysis also examines the three states' capacity to respond to public health crises in relation to their self-determination power.

“All peoples have the right to self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”
– Unrepresented Nations & Peoples Organization¹

INTRODUCTION

It is not possible to be free yet forced to be associated. It is not possible to be sovereign yet dominated. A state cannot practice democratic governance and self-determination if subjected to colonialism, the recurring dominion of its autonomy.² A lack of governance and self-determination hinders a state’s health care delivery system and other structures which are essential for the development of the state as well as for the optimum desired population health outcomes.³ It is imperative to examine the intersection of population health and governance, as the healthier a country’s population is, the more likely that country is to produce, develop, and succeed.⁴

To properly approach the health of the population and achieve health equity and justice, it is essential to address social, cultural, political, and historical contexts that might influence the system structures.⁵ Efforts to understand and better address health deficiencies must include a detailed examination of the political and legal factors that contribute to those deficiencies; however, such an examination has not been undertaken due to the limited resources available. A deeper analysis of the reasons behind these limitations is imperative, and we seek to do that with this paper.

Analyzing Puerto Rico’s lack of democratic governance and self-determination within its healthcare structures, and comparing the archipelago to Hawai’i and Massachusetts, reveals the lasting effects of Puerto Rico’s historic colonial status and the resulting negative impact on its healthcare delivery system and inhabitants.⁶ Some believe that Puerto Rico’s

- 1 *Self-Determination*, UNREPRESENTED NATIONS & PEOPLES ORG. (Sept. 21, 2017), <https://unpo.org/article/4957>.
- 2 See Peter Hilpold, *Self-Determination and Autonomy: Between Secession and Internal Self-Determination*, 24 INT’L J. ON MINORITY & GRP. RTS. 302, 328 (2017).
- 3 See COMM. ON ASSURING THE HEALTH OF THE PUB. IN THE 21ST CENTURY, INST. OF MED. OF THE NAT’L ACADS., *THE FUTURE OF THE PUBLIC’S HEALTH IN THE 21ST CENTURY* 101–02, 204, 257 (2002).
- 4 Carol Ann Medlin et al., *Improving the Health of Populations: Lessons of Experience*, in *DISEASE CONTROL PRIORITIES IN DEVELOPING COUNTRIES* 165, 165 (Dean T. Jamison et al. eds., 2d ed. 2006).
- 5 COMM. ON CMTY.-BASED SOLS. TO PROMOTE HEALTH EQUITY IN THE U.S., NAT’L ACADS. OF SCI., ENG’G, & MED., *COMMUNITIES IN ACTION: PATHWAYS TO HEALTH EQUITY* 99 (James N. Weinstein et al. eds., 2017).
- 6 See Samantha Rivera Joseph et al., *Colonial Neglect and the Right to Health in Puerto Rico After*

colonial status is a fundamental issue that has produced its economic and political failures, adversely affecting the health and overall well-being of the population. Instead, by examining specific domains in the healthcare system such as finances, care processes, and infrastructure, it becomes clear how a lack of democratic governance and self-determination in a colonial state undermines various efforts to protect public health and provide effective healthcare delivery.⁷ Thus, it is the lack of autonomy, self-determination, and governance that sets the healthcare system up to fail.

Part I of this article analyzes definitions of colonialism, imperialism, governance, and self-determination in order to provide a basis for our paper's analysis. Part II provides an overview of Puerto Rico's political and legal history. In Part III, we address the differences in governance and self-determination between Puerto Rico, Massachusetts, and Hawai'i. In Part IV, we briefly discuss the healthcare sector in the United States (U.S.) before moving on to an examination of the three states' finances, healthcare infrastructure, and effectiveness of healthcare delivery in Part V. In Part VI, we analyze the three states' responses to COVID-19 with an eye towards the states' governance and self-determination. Finally, we conclude with future steps, and a call to release Puerto Rico from colonial control in hopes of improving health outcomes for Puerto Ricans.

I. DEFINING TERMS

A. *Colonialism vs. Imperialism*

To understand Puerto Rico's current state, one must understand colonialism and imperialism, two distinct, yet similar, practices. The Stanford Encyclopedia of Philosophy defines colonialism as, "a practice of domination, which involves the subjugation of one people to another."⁸ Like colonialism, imperialism also involves political and economic control over a dependent territory, but by looking at the etymology of the two terms, one can gain insight into their differences. "Colony" is derived from *colonus*, the Latin word for farmer.⁹ The term highlights that the practice of colonialism

Hurricane Maria, 110 AM. J. PUB. HEALTH 1512 (2020), for further reading on standards of health and colonial status.

7 See Amelia Cheatham & Diana Roy, *Puerto Rico: A U.S. Territory in Crisis*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/backgrounder/puerto-rico-us-territory-crisis> (Feb. 3, 2022).

8 Margaret Kohn & Kavita Reddy, *Colonialism*, STAN. ENCYCLOPEDIA PHIL., <https://plato.stanford.edu/entries/colonialism/> (Aug. 29, 2017).

9 *Id.*

usually involved the relocation of a group of individuals to a new territory where they permanently lived while maintaining political, social, and cultural allegiances to their origin countries.¹⁰ Imperialism, similarly, has Latin roots in the word *imperium*, meaning to command, thus, drawing “attention to the way that one country exercises power over another, whether through settlement, sovereignty, or indirect mechanisms of control.”¹¹ Consequently, colonialism and imperialism are often incorrectly used interchangeably due to the similarities in their definitions.

Throughout history colonialism and imperialism were seen as forms of conquest with similar economic and strategic benefit to Europe, and consequently, the terms have not been consistently differentiated in literature.¹² Some scholars distinguish colonialism as having colonies for settlement and imperialism as having colonies for economic exploitation.¹³ Other people differentiate between the two terms by describing colonialism as “dependencies that are directly governed by a foreign nation” and imperialism as “[involving] indirect forms of domination.”¹⁴ However, to suggest that such a bright line exists is an oversimplification.

Additional confusion of the terms arises because both practices were used in the conquest of the Americas and were present in the expansionist policies of Europe throughout all their overseas properties.¹⁵ From the sixteenth century to the 1960s national liberation movements, Europe dominated their overseas properties either by settlement or exploitation.¹⁶ All around the “postcolonial” world, countries experience the political and economic consequences of such dominations—especially countries that transitioned from political dependence to sovereignty.¹⁷

Colonialism is frequently used to describe places such as North America, Australia, New Zealand, Algeria, and Brazil because of the vast European populations that permanently settled there. Settling by foreign nationals from the colonial matrix speeds up and sustains control by displacing native populations.¹⁸ In comparison, imperialism is often characterized

10 *Id.*

11 *Id.*

12 *Id.*

13 *Id.*

14 *Id.*

15 *Id.*

16 *Id.*

17 Lina Benabdallah et al., *Global South Perspectives on International Relations Theory*, E-INT'L RELS. (Nov. 19, 2017), <https://www.e-ir.info/2017/11/19/global-south-perspectives-on-international-relations-theory/>.

18 See LORENZO VERACINI, SETTLER COLONIALISM: A THEORETICAL OVERVIEW 2–5 (2010); *Native Americans and Colonization: The 16th and 17th Centuries*, BRITANNICA, <https://www.britannica.com/entry/native-americans-and-colonization>.

by the control of a territory from the matrix governing nation regardless of whether settlers populate it.¹⁹ The imperialist nation exerts political, military, or economic control of the territory's affairs.²⁰ Hence, examples of imperialism can be found in "the scramble for Africa throughout the late nineteenth century and the American domination of the Philippines and Puerto Rico."²¹

By taking into account its political and historical developments, Puerto Rico has been, and continues to be, under both colonial status and imperialistic control.²² The archipelago has been, and continues to be, a colony for settlement and for economic exploitation.²³ The U.S. continues to exercise permanent command of Puerto Rico, controlling the economic and political affairs of the archipelago, and should be held responsible for its future.²⁴

B. Governance

It is an emerging paradigm, understood as "the manner through which the members in a society organize their coexistence—the fundamental and conjectural precepts surrounding their newly-founded civilization and the ways of coordinating to carry them out: their sense of direction and their ability to lead."²⁵ This demonstrates that the act of governing is more important than the government as a whole; what matters most is that the administration, executives, and legislatures "do with and for other social and economic actors, rather than by and for themselves."²⁶

britannica.com/topic/Native-American/Native-Americans-and-colonization-the-16th-and-17th-centuries (last visited Apr. 8, 2022).

19 Kohn & Reddy, *supra* note 8.

20 *Imperialism*, BRITANNICA, <https://www.britannica.com/topic/imperialism> (last visited May 10, 2022).

21 Kohn & Reddy, *supra* note 8.

22 Pedro Cabán, *Puerto Rico and PROMESA: Reaffirming Colonialism*, NEW POL. (June 27, 2017), https://newpol.org/issue_post/puerto-rico-and-promesa-reaffirming-colonialism/; Luna Martínez, *A Colony Is a Colony: Puerto Rico and the Courts*, CTR. FOR CONST. RTS. (Oct. 21, 2021), <https://ccrjustice.org/home/blog/2021/10/20/colony-colony-colony-puerto-rico-and-courts>.

23 Martínez, *supra* note 22; *see also* Cabán, *supra* note 22.

24 *See* Jeniffer Wiscovitch, *Los Efectos del Coloniaje en la Vida de los Puertorriqueños*, ES MENTAL (Nov. 10, 2020), <https://www.esmental.com/los-efectos-del-coloniaje-en-la-vida-de-los-puertorriqueños>.

25 LUIS F. AGUILAR VILLANUEVA, GOBERNANZA Y GESTIÓN PÚBLICA 90 (5th ed. 2013); Carlos E. Quintero Castellanos, *Gobernanza y Teoría de las Organizaciones*, 25 PERFILES LATINOAMERICANOS 39, 41 (2017).

26 Quintero Castellanos, *supra* note 25, at 41.

Governance includes administrative authority at a high level but is not limited to the myriad of designated government actors established by law.²⁷ This fosters the inclusion of other, non-governmental actors while mitigating the typical “restrictions of bilateral bureaucratic relationships.”²⁸ Governance also includes a collaborative level where various actors work together to evaluate current processes and societal challenges, and develop effective solutions to them.²⁹

In intersectional government processes, states and their government actors are inclined to make decisions based on their own experiences.³⁰ Those decisions influence laws and regulations “that now fall short in the face of the complexity and magnitude of the emerging problems they must resolve, as they must manage broader and more inclusive societal criteria to achieve a new public governance status.”³¹ In fact, governance and the government are intimately intertwined and the government is embedded in its institutions, representing a strong example of administrative reform.³² As an agreed set of values, beliefs, and regulations, governance is a democratic process of creating goals and instruments of public action for administrative reform that allows both government and social organizations to address public issues to achieve a sustainable and fruitful social order.³³

However, governance is still an emerging paradigm and remains quite an elusive concept at the theoretical level.³⁴ It is especially vague when it comes to defining the forms it takes within already established government structures. R. A. W. Rhodes called it “imprecise” in his article, *The New Governance: Governing without Government*.³⁵ Rhodes presents various definitions of governance before proposing his own, and cites several definitions of government, focusing on six foundations: (1) a minimum state, (2) corporate governance, (3) new public management, (4) good governance, (5) a socio-cybernetic system, and (6) self-organized networks.³⁶ As proposed by Rhodes, the action of governing is tied to what he deems “self-organizing, interorganizational networks.”³⁷ He argues that the networks work alongside

27 *Id.* at 43.

28 *Id.*

29 *Id.*

30 *Id.*

31 *Id.*

32 *Id.*

33 *Id.*

34 AGUILAR VILLANUEVA, *supra* note 25, at 43.

35 R.A.W. Rhodes, *The New Governance: Governing Without Government*, 44 POL. STUD. 652, 652 (1996).

36 *Id.* at 652–53.

37 *Id.* at 660.

markets and hierarchies as governing mechanisms that allocate resources and exercise control.³⁸ He also suggests that the current use of the word “governance” is not a synonym for “government,” and that it instead can signify a change in the governing process.³⁹ That is, “governance” refers to a new process of governing, a change in how the government should be defined, or the new method by which society is governed.⁴⁰

Poor governance, which manifests itself in the form of lack of accountability and transparency, corruption, and communities’ limited or lack of engagement with health systems and institutions, contributes to ineffective deployment of services.⁴¹ Because of this, since the early 1990s, several institutions such as the United Nations Development Program, World Bank Department for International Development, and the International Monetary Fund, have worked to define governance at a state level to alleviate challenges in the development of this theoretical concept.⁴² Accordingly, there is not a single definition to encompass all that governance entails.⁴³

In *Health Governance: Principal-Agent Linkages and Health System Strengthening*, authors Brinkerhoff and Bossert provide a useful definition of governance in the field of health services which includes the political dimension of the term.⁴⁴ Prevailing theories of health governance utilize a “task/function” approach where an enumerated set of tasks are presumed to be executed by health organizations such as the World Health Organization (WHO).⁴⁵ However, this task/function approach does not account for the numerous actors in health systems, their roles and responsibilities, or their willingness to fulfill their duties.⁴⁶ Alternatively, Brinkerhoff and Bossert suggest an approach to health governance with a wider reach, encompassing authority, power, and decision-making in the institutional arenas of civil society, politics, policy, and public administration.⁴⁷ Having this differentiation

38 *Id.* at 652.

39 *Id.* at 652–53.

40 *Id.*

41 Marjolein Dieleman et al., *Improving the Implementation of Health Workforce Policies Through Governance: A Review of Case Studies*, HUM. RES. FOR HEALTH, Apr. 2011, at 1, <https://human-resources-health.biomedcentral.com/track/pdf/10.1186/1478-4491-9-10.pdf>.

42 *Id.*

43 Rhodes, *supra* note 35, at 660.

44 *See generally* Derick W. Brinkerhoff & Thomas J. Bossert, *Health Governance: Principal-Agent Linkages and Health System Strengthening*, 29 HEALTH POL’Y & PLAN. 685 (2014).

45 *Id.* at 686.

46 *Id.*

47 *See id.* at 686–89; *see also* Suerie Moon, *Power in Global Governance: An Expanded Typology from Global Health*, GLOBALIZATION & HEALTH, Nov. 2019, at 1, 7–8, <https://globalizationandhealth.biomedcentral.com/track/pdf/10.1186/s12992-019-0515-5>.

in mind is important as it is encased within the framework analyzed here, which recognizes that effective governance, among other factors, is the key to adequate development of our healthcare systems.⁴⁸

Based on Rhodes's and Brinkerhoff and Bossert's definitions, we can conclude that governance is more than just the institutions that officially rule a society (i.e., the government), but also includes all other institutions that affect the way the government runs by influencing other aspects of society, like the distribution of resources and services. This is important in the context of this research because responsible governance is crucial to a nation's development. However, in a colonial state, even agencies and organizational alternatives to government are subject to inescapable policies that hinder any internal effort to implement the aforementioned "self-organizing, interorganizational networks."⁴⁹

C. *Self-determination*

Self-determination was first recognized by international law in the 1960s as the "the right of all colonial territories to become independent or to adopt any other status they freely [choose]," but the concept existed long before this.⁵⁰ President Woodrow Wilson, in his famous Fourteen Points speech of 1918, is one of the earliest proponents of the concept.⁵¹ The speech proposed strategies to achieve world peace based on many domestic progressive ideas that were translated into foreign policies such as free trade, open agreements, democracy, and self-determination.⁵² In a subsequent speech, President Wilson summarized the concept of self-determination, noting:

[A]ll well-defined national aspirations shall be accorded the utmost satisfaction that can be accorded them without introducing new or perpetuating old elements of discord and antagonism that would be likely in time to break the peace of Europe and consequently of the world⁵³

pdf (discussing meanings of power within global governance definitions).

48 See Dieleman et al., *supra* note 41, at 9.

49 Rhodes, *supra* note 35, at 661–63.

50 Hurst Hannum, *Legal Aspects of Self-Determination*, ENCYCLOPEDIA PRINCETONIENSIS, <https://pesd.princeton.edu/node/511> (last visited Apr. 7, 2022); *Self-Determination, FACING HIST. & OURSELVES*, <https://www.facinghistory.org/holocaust-and-human-behavior/chapter-3/self-determination> (last visited Apr. 7, 2022).

51 Hannum, *supra* note 50.

52 See Woodrow Wilson, Fourteen Points Speech, War Address to Congress (Jan. 8, 1918).

53 Woodrow Wilson, 28th President of the United States, Address to Congress on

One problem with the concept of self-determination is that it has been an ambiguous principle since its inception.⁵⁴ For example, it was used by Leninists under Marxism to justify foreign intervention to liberate people who were oppressed according to Marxist theory.⁵⁵ However, self-determination was not considered when communist nations were the ones accused of oppressing people.⁵⁶ This ambiguity is further reflected in the Soviet Constitution of 1924, in which the right to the self-determination was established for member Republics of the Soviet Union; however, the same right was not extended to those in the Autonomous Regions.⁵⁷ This is contradictory as it implies the existence of autonomy outside of self-determination.⁵⁸

The predecessor of the United Nations (UN), the League of Nations (LoN), exemplified this vagueness early on when the organization established that self-determination could not be applied arbitrarily but required a balancing analysis between the self-determination of peoples and the integrity of nations.⁵⁹ The LoN justified this rationale by arguing that if its application or implementation of the principle was irresponsible, there was a risk for monumental disintegration of nations.⁶⁰ For this reason, initially, the LoN intended to apply this principle in a purely political way by providing guidelines by which peoples could define their right to self-determination but not in a legal way.⁶¹ This meant there was no mechanism to assert a right to self-determination against a State without threatening the integrity of the nation.⁶² However, the principle manifested as a legal mandate and was applied specifically to colonies under the supervision of

International Order (Feb. 11, 1918), <https://www.presidency.ucsb.edu/documents/address-congress-international-order>.

54 Romualdo Bermejo García, *El Derecho de Autodeterminación de los Pueblos a la Luz del Derecho Internacional*, NANOPDF.COM 3 (May 14, 2018), https://nanopdf.com/download/el-derecho-de-autodeterminacion-de-los-pueblos-a-la-luz-del_pdf.

55 *Id.* at 1.

56 *Id.*

57 Juan Antonio Martínez Muñoz, *La Autodeterminación*, 8 ANUARIO DE DERECHOS HUMANOS 326, 326 (2007).

58 *See id.*

59 *See* Navdeep Kour Sasan, *League of Nations and Self-Determination*, 3 GNLU J.L. DEV. & POL. 139, 142–43 (2013).

60 *See id.* at 143; Allen Lynch, *Woodrow Wilson and the Principle of 'National Self-Determination': A Reconsideration*, 28 REV. INT'L STUD. 419, 425–26 (2002); PATRICIA CARLEY, SELF-DETERMINATION: SOVEREIGNTY, TERRITORIAL INTEGRITY AND THE RIGHT TO SECESSION 3 (1996), <https://www.usip.org/sites/default/files/pwks7.pdf>.

61 Bermejo García, *supra* note 54, at 2, 8.

62 *See* Sasan, *supra* note 59, at 143.

the LoN.⁶³

The mandate constituted a sort of treaty or mandatory power between the LoN and the colonizing nation, through which particular States were entrusted to perform certain supervisory functions on behalf of the LoN and periodically report to the LoN about the mandate with the goal of preparing these mandated nations for future independence.⁶⁴ Allowing certain nations to continue exercising supervisory power over others under the figure of colonialism was clearly discriminatory against the colonized territories, which continued living under a system of vassalage regarding the colonizing power.⁶⁵

When the LoN failed to prevent the occurrence of World War II and dissolved, the UN emerged as the leading international political and legal organization.⁶⁶ The UN introduced the principle of self-determination of the peoples within its constitutive charter.⁶⁷ Article 1 sets forth the charter's purpose to foster friendly and respectful relations based on equal rights and people's self-determination, among other efforts to uphold universal peace, stating the commitment, "[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."⁶⁸ Similarly, Article 55 of the UN Charter states that:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and the self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

63 See Bermejo García, *supra* note 54, at 2; Nele Matz, *Civilization and the Mandate System Under the League of Nations as Origin of Trusteeship*, [2005] 9 Max Planck Y.B. U.N. L. 47, at 69.

64 Matz, *supra* note 63, at 55, 70; Bermejo García, *supra* note 54, at 2.

65 See Bermejo García, *supra* note 54, at 2–3.

66 Collin Makamson, *'The League Is Dead. Long Live the United Nations.'* NAT'L WORLD WAR II MUSEUM (Apr. 19, 2021), <https://www.nationalww2museum.org/war/articles/league-of-nations>.

67 U.N. Charter art. 1.

68 Bermejo García, *supra* note 54, at 4–5.

- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.⁶⁹

And Article 73 states:

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

- a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
- b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;
- c. to further international peace and security;
- d. to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and
- e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.⁷⁰

Despite these articles, the two different regimes under which colonies

69 U.N. Charter art. 55.

70 U.N. Charter art. 73.

and territories subject to mandate were treated exposes a contradiction: non-autonomous territories, or colonies, were dealt with under a colonial establishment, yet there was at the same time a widespread recognition of the right of all peoples to self-determination.⁷¹

The implementation of these two regimes exposes two contrasting notions. On one hand, it accepts the colonial establishment framed under the category of non-autonomous territories, however, on the other, it recognizes the right of peoples to self-determination.⁷² The decolonization processes that took place during the second half of the twentieth century were founded through this new international legal frame.⁷³ One of the central objectives of these processes was to dismantle the British Empire and the French colonies in Africa and Asia, and readjust borders in European countries such as in Italy, Austria-Hungary, and Poland.⁷⁴

By using the principle to change countries' political systems and geography, self-determination of the peoples shaped our current world. In doing so, however, it left unresolved the problem posed by territories that desired secession, giving way to many current political discourses and independence controversies in the world. This consequence stemmed from the principle being initially applied without limits or safeguards in relation to the territorial integrity of nations.⁷⁵

The question remains: Is self-determination a mere principle for theoretical analysis or is it a right? If we accept that it is merely a principle, it implies an almost complete absence of legal protection or other enforcement, which puts any self-deterministic claim at risk since this principle only applies in cases of colonial territories or under UN mandate and there is no legal protection backing colonial territories in their pursuit of self-determination.⁷⁶

In the years since the UN first wrote its Charter, public international law has broadened to include several additional issues. For example, it now deals with cases in which minorities are victims of serious human rights violations perpetrated by the State.⁷⁷ Because of this new, broader margin

71 See Zubeida Mustafa, *The Principle of Self-Determination in International Law*, 5 INT'L LAW. 479, 480 (1971); Bermejo García, *supra* note 54, at 3.

72 Bermejo García, *supra* note 54, at 3.

73 *Id.* at 4.

74 Martínez Muñoz, *supra* note 57, at 327.

75 See Bermejo García, *supra* note 54, at 1–14.

76 *See id.*

77 See Off. of the High Comm'r for Hum. Rts., *Minority Rights: International Standards and Guidance for Implementation*, 14–18, U.N. Doc. HR/PUB/10/3 (2010). See generally Lucía Payero López, *El Derecho de Autodeterminación de los Pueblos. Análisis Crítico del Marco Constitucional Español Desde la Filosofía Jurídico-Política* (2014) (Doctoral

of action within international law, self-determination can no longer be considered only a mere principle, as it is necessary to give it all the effects and powers of a right in order to empower colonized territories in their pursuit of autonomy.

In the conference of Bandung in 1955, self-determination was proposed as a necessary condition for the development of peace between nations, offering an anti-colonial vision of the law and fundamentally presenting it as a right.⁷⁸ One of the foremost documents that advocated for this right was the Declaration on the Granting of Independence to Colonial Countries and Peoples, sometimes called the “Magna Carta of Decolonization.”⁷⁹ The Declaration was approved by UN Resolution 1514 on December 14, 1960, and states: “All peoples have the right of self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”⁸⁰ This Declaration recognized self-determination as a necessary right in the efforts to bring colonialism to a “speedy and unconditional end.”⁸¹

An additional problem in analyzing the application of self-determination is identifying the populations to whom it is supposed to apply. Within the international provisions put forth by the UN charter, self-determination applies to “peoples,” but the term “people” is never clarified or conceptualized.⁸² This vagueness allows a great margin of interpretation because it is not clear whether “people” may be understood as a synonym for nation.⁸³ Consequently, self-determination presents as a right of the people who share common culture, religion, language, or other characteristics,

thesis, Universidad de Oviedo), https://digibuo.uniovi.es/dspace/bitstream/handle/10651/28934/TD_LuciaPayeroLopez.pdf.

78 *Bandung Conference (Asian-African Conference), 1955*, OFF. HISTORIAN, <https://history.state.gov/milestones/1953-1960/bandung-conf> (last visited Apr. 10, 2022).

79 Edward McWhinney, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, UNITED NATIONS AUDIOVISUAL LIBR. INT’L L. (2008), https://legal.un.org/avl/pdf/ha/dicc/dicc_e.pdf; see Meetings Coverage, General Assembly, Decolonization ‘Remarkable but Incomplete’ Chapter in United Nations History, Says Secretary-General, Spurring Action at Commemoration of Decolonization Declaration, U.N. Meetings Coverage GA/11037 (Dec. 14, 2010), <https://www.un.org/press/en/2010/ga11037.doc.htm>.

80 G.A. Res. 1514 (XV), ¶ 2 (Dec. 14, 1960).

81 See G.A. Res. 1514 (XV), *supra* note 80.

82 Matthew Saul, *The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?*, 11 HUM. RTS. L. REV. 609, 614, 616–18 (2011).

83 See KAREN KNOP, DIVERSITY AND SELF-DETERMINATION IN INTERNATIONAL LAW 51–65 (eBook ed. 2004).

and reside in a specific territory.⁸⁴ This application of the principle of self-determination, as put forth by the UN, could be interpreted as a restriction:

[A] State cannot limit the freedom of the peoples that inhabit it through the imposition of a culture, language or customs contrary to the people, under the excuse of the application of the principle of international sovereignty. That is why the right of self-determination of peoples applies to peoples but not to States, neither religions nor ethnic groups.⁸⁵

This further illustrates how both possible applications of the principle (legal versus political; individual versus State) are at odds in practice.

While there are many benefits to incorporating self-determination as a right within public international law, self-determination of peoples brings about the possibility of causing the disintegration of the State.⁸⁶ The right to self-determination would conflict with the traditional conception which understands rights as a limitation of power, recognizing that only certain individual rights prevail over the sovereignty of the State.⁸⁷ Applying this right to people could work against a state's sovereignty, with the risk of an individual's right to self-determination prevailing over the state's interest, as a legal subject under public international law.⁸⁸ As some scholars have noted, "such recognition of a people to their self-determination would not be against public international law but would be in their favor to the extent that rights are respected as limitations to the exercise of authoritarian power."⁸⁹ This summarizes the balancing act required when applying the principle of self-determination: that guaranteeing the people's right to self-determination against State imposition—political application—should not threaten the integrity of the State from the perspective of international law.

84 Martínez Muñoz, *supra* note 57, at 350–51.

85 Ronald Edgardo Cuenca Tovar & Judith Patricia Beltrán Ramírez, *El Derecho a la Autodeterminación de los Pueblos y los Movimientos Independentistas*, CRITERIO LIBRE JURÍDICO, Jan.-June 2018, at 4, 10.

86 *Id.*

87 See Neil MacFarlane & Natalie Sabanadze, *Sovereignty and Self-Determination: Where Are We?*, 68 INT'L J. 609, 624–25 (2013); John Charvet, *The Idea of State Sovereignty and the Right of Humanitarian Intervention*, 18 INT'L POL. SCI. REV. 39, 40–42 (1997).

88 Cuenca Tovar & Beltrán Ramírez, *supra* note 85, at 10.

89 *Id.*

II. THE CASE OF PUERTO RICO

A. *Puerto Rico's Colonial and Imperialist History*

Puerto Rico has been a colony or imperial territory throughout most its recorded history. Originally inhabited by Indigenous populations such as the Taíno and Carib peoples, Puerto Rico became known to the western world through Christopher Columbus's voyage to the island in 1493.⁹⁰ The archipelago was first colonized by the Spanish in the early sixteenth century and remained under Spanish control until the end of the nineteenth century.⁹¹ When the Spanish lost the Spanish-American War in 1898, they ceded their overseas colonies to the U.S..⁹² Since that time, Puerto Rico has been under the control of the U.S..⁹³

After the Spanish-American War ended in 1898, the U.S. started a process of acquiring noncontiguous continental territories from Spanish possession.⁹⁴ During this time, the U.S. cemented its position as a political and economic superpower through its imperial acquisition of new territories by force.⁹⁵ However, this was not the beginning of the U.S. acquisition of other territories. The Spanish-American War was the culmination of an expansionist process for the U.S. that climaxed fifty years earlier at the end of the Mexican American War.⁹⁶

In 1848, the U.S. and Mexico signed the Treaty of Guadalupe Hidalgo, leading to the annexation of land that later became parts of the states of California, Arizona, New Mexico, Nevada, and Utah.⁹⁷ The acquisitions of land from the Spanish-American War, however, were treated differently than the acquisition of land from the Mexican-American war, largely because of their geographical distance.⁹⁸ These new territories, “namely Puerto Rico, the Philippine Islands, and Guam, were not only

90 *History*, NAT. RES. CONSERVATION SERV., https://www.nrcs.usda.gov/wps/portal/nrcs/detail/pr/about/?cid=nrcs141p2_037303 (last visited Apr. 10, 2022).

91 *Puerto Rico*, YALE U. GENOCIDE STUD. PROGRAM, <https://gsp.yale.edu/case-studies/colonial-genocides-project/puerto-rico> (last visited Mar. 18, 2022); see also FERNANDO PICÓ, HISTORY OF PUERTO RICO: A PANORAMA OF ITS PEOPLE 38, 231, 238 (2006).

92 PICÓ, *supra* note 91, at 231, 238.

93 *Today in History - October 18*, LIBR. CONG., <https://www.loc.gov/item/today-in-history/october-18/> (last visited Mar. 26, 2022).

94 PICÓ, *supra* note 91, at 231.

95 See *id.* at 231, 237.

96 See *The Treaty of Guadalupe Hidalgo*, NAT'L ARCHIVES, <https://www.archives.gov/education/lessons/guadalupe-hidalgo> (June 2, 2021).

97 *Id.*

98 See Juan R. Torruella, *The Insular Cases: The Establishment of a Regime of Political Apartheid*, 29 U. PA. J. INT'L L. 283, 288–89 (2007).

noncontiguous with the United States proper but . . . were separated from the mainland by considerable oceanic distances.”⁹⁹ Indeed, “for the first time in its history, the United States acquired sovereignty over noncontiguous lands separated by thousands of miles from the political and economic epicenter of the American polity. . . .”¹⁰⁰ Hawai’i’s treatment, on the other hand, more closely mirrors that of the Spanish islands because it is also a group of islands several thousand miles from the mainland U.S.¹⁰¹ Furthermore, its annexation was a result of the Newlands Resolution of 1898, which was contemporaneous with the Spanish-American War.¹⁰²

There are additional aspects that made a difference in how the Spanish overseas colonies were treated. Very few U.S. citizens lived in Puerto Rico, the Philippines, and Guam when the U.S. obtained control over these Spanish islands.¹⁰³ Instead, these islands were “inhabited by large numbers of subject peoples of different races, languages, cultures, religions, and legal systems than those of the then-dominant Anglo-Saxon society of the United States.”¹⁰⁴ Most importantly, most of the large native populations inhabiting these islands were people of color, a fact that cannot be ignored in an analysis of discriminatory treatment in the process of acquisition and assimilation of these territories.¹⁰⁵

Regardless of these differences in the U.S. acquisition of Puerto Rico and the other Spanish colonies, the importance of these possessions for the U.S. was evident. Military expansion and economic exploitation have been the unsung reasons to keep overseas territories.¹⁰⁶ In 1899, the Carroll Commission, led by Henry K. Carroll, filed a report about the conditions in Puerto Rico in which he and his companions foresaw the territory becoming an integral part of the U.S., “destined for statehood.”¹⁰⁷

Despite the report being favorable to Puerto Rico’s statehood,

99 *Id.*

100 *Id.* at 289.

101 See Gustavo A. Gelpí, *The Insular Cases: A Comparative Historical Study of Puerto Rico, Hawai’i, and the Philippines*, FED. LAW., Mar.-Apr. 2011, at 22, 23.

102 *Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States (1898)*, NAT’L ARCHIVES, <https://www.archives.gov/milestone-documents/joint-resolution-for-annexing-the-hawaiian-islands> (last visited Apr. 15, 2022).

103 See Torruella, *supra* note 98, at 289.

104 *See id.*

105 See Rick Baldoz, *The Racial Vectors of Empire: Classification and Competing Master Narratives in the Colonial Philippines*, 5 DU BOIS REV. 69, 75–77 (2008); Ediberto Román, *The Alien-Citizen Paradox and Other Consequences of U.S. Colonialism*, 26 FLA. ST. U.L. REV. 1, 17 (1998).

106 Torruella, *supra* note 98, at 289–90.

107 *Id.* at 296; see HENRY K. CARROLL, U.S. TREASURY DEP’T, REPORT ON THE ISLAND OF PORTO RICO 58–64 (1899).

the Filipino insurrection against annexation created a wave of political resistance to the integration of the overseas territories.¹⁰⁸ Senator Joseph B. Foraker introduced a bill to grant Puerto Ricans citizenship and to establish a civil government on the island based, in part, on the Carroll report, but the congressional debates about the bill reflect how divided Congress was on the issue.¹⁰⁹ Statements made by congressmen opposing the Foraker Bill showcased the racial and cultural biases that motivated the opposition.¹¹⁰ Exemplifying this racism, Mississippi Congressman Thomas Spight said, “[t]he inhabitants are of wholly different races of people from ours . . . They have nothing in common with us and centuries cannot assimilate them . . . They can never be clothed with the rights of American citizenship”¹¹¹ When the Foraker bill finally passed in April 1900, it was heavily amended and deleted the citizenship provisions for Puerto Rico.¹¹²

Under President Theodore Roosevelt, the same rhetoric of American superiority continued to shape how the U.S. related to their newly acquired territories.¹¹³ After the Foraker Bill was amended, between 1901 and 1905, the Supreme Court decided multiple cases known as the “Insular Cases.”¹¹⁴ These cases, “constitutionally justified imperialist policy toward the territories of Hawai’i, Puerto Rico, and the Philippines,” and essentially replaced the previous process for territories to gain statehood.¹¹⁵

B. *The Insular Cases*

The Insular Cases are a compendium of decisions that extended the debate over the Spanish-American War and the imperialism that caused the conflict into U.S. Constitutional law and established the norm on decision making around territories.¹¹⁶ Prior to the Insular Cases, the Northwest Ordinance set out the process for U.S. territories to gain statehood.¹¹⁷ This Ordinance went into effect shortly after the end of the American

108 See CARROLL, *supra* note 107, at 58–64; E. SAN JUAN, JR., U.S. IMPERIALISM AND REVOLUTION IN THE PHILIPPINES, at XVI–XVII (2007).

109 Torruella, *supra* note 98, at 297.

110 *Id.* at 297–98.

111 33 CONG. REC. 2105 (1900).

112 José A. Cabranes, *Citizenship and the American Empire: Notes on the Legislative History of the United States Citizenship of Puerto Ricans*, 127 U. PA. L. REV. 391, 433–34 (1978).

113 See Sidney Milkis, *Theodore Roosevelt: Foreign Affairs*, MILLER CTR., <https://millercenter.org/president/roosevelt/foreign-affairs> (last visited Apr. 6, 2022).

114 Gelpí, *supra* note 101, at 22.

115 *Id.*

116 Torruella, *supra* note 98, at 287; *see, e.g.*, *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Goetze v. United States*, 182 U.S. 221 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901).

117 JOURNALS OF THE CONTINENTAL CONG. 337–38 (1787); Gelpí, *supra* note 101, at 22.

Revolutionary War, when the Northwest Territory was created and incorporated to the newly independent U.S.¹¹⁸ The Ordinance established an incorporation policy outlining how a newly acquired territory could achieve statehood.¹¹⁹ Under the Ordinance, while the population of free, male inhabitants of a territory was less than 5,000, there would be a limited form of government: a governor, a secretary, and three judges, all appointed by the U.S. Congress.¹²⁰ Once the population reached 5,000 free male inhabitants, the territory would have an elected assembly, and one non-voting delegate in Congress.¹²¹ Finally, once the population reached 60,000, the territory could request statehood and would draft a state constitution.¹²²

The Northwest Ordinance was “de facto repealed” as a result of the Insular cases, creating constitutional precedent.¹²³ In its place, the Court devised the doctrine of “territorial incorporation,” creating two types of U.S. territories: (1) incorporated territory, which is destined for statehood and to which the Constitution fully applies, and (2) an unincorporated territory, which is not bound for statehood, and to which only “fundamental” constitutional guarantees apply.¹²⁴ The early Insular Cases, including *Downes* and *De Lima*, were decided by a narrow 5-4 plurality.¹²⁵ The U.S. Supreme Court laid out the basis for the novel territorial policy established in the Insular Cases in its decision in *Downes v. Bidwell*.¹²⁶ In this case, the Court decided that territories would only receive the full protection of the Constitution if they were incorporated territories, as determined by Congress.¹²⁷ In determining whether a territory was incorporated, Congress was permitted to consider the race of those inhabiting the territory and its production capabilities.¹²⁸ Specifically, the opinion goes on to say:

It is obvious that in the annexation of outlying and distant possessions grave questions will arise from differences of race,

118 See JOURNALS OF THE CONTINENTAL CONG. 337–38 (1787); *Northwest Territory*, BRITANNICA, <https://www.britannica.com/place/Northwest-Territory> (last visited Apr. 8, 2022); Jeff Wallenfeldt, *Timeline of the American Revolution*, BRITANNICA, <https://www.britannica.com/list/timeline-of-the-american-revolution> (last visited Apr. 8, 2022).

119 See JOURNALS OF THE CONTINENTAL CONG. 337–38 (1787).

120 *Id.*

121 *Id.*

122 *Id.*

123 Gelpí, *supra* note 101, at 22.

124 *Id.* at 23.

125 See Krishanti Vignarajah, *The Political Roots of Judicial Legitimacy: Explaining the Enduring Validity of the Insular Cases*, 77 U. CHI. L. REV. 781, 790, 793 (2010).

126 Gelpí, *supra* note 101, at 23; see also *Downes v. Bidwell*, 182 U.S. 244 (1901).

127 Gelpí, *supra* note 101, at 23; see also *Downes*, 182 U.S. 244.

128 See *Downes*, 182 U.S. at 282.

habits, laws and customs of people, and from differences of soil, climate and production, which may require action on the part of Congress that would be quite unnecessary in the annexation of contiguous territory inhabited only by people of the same race, or by scattered bodies of native Indians.¹²⁹

Since this decision, the “U.S. territories and their inhabitants have now for over a century been treated in an anomalously separate and unequal manner”¹³⁰

There are plenty of examples of the discriminatory treatment that resulted from such incorporation policy, particularly in the case law that followed. This case law is better known as the Insular Cases: a series of decisions issued by the U.S. Supreme Court that set restrictions on the enjoyment of American citizenship available to residents of Puerto Rico, still to this date.¹³¹ Although the relevance and extension of these cases is a matter of debate among legal scholars in Puerto Rico and the U.S., in the U.S., the Insular Cases remain as binding precedent today.¹³² These cases are a contradiction to the nation’s standard of equality for all of its citizens, relating to past racist perceptions from imperialism and colonialism.¹³³ Scholars and authority at the time the Insular Cases were decided, such as former Yale Law professor, Simeon Baldwin, fed the doctrine that encouraged these cases. In a Harvard Law Review piece, Baldwin wrote, “[o]ur constitution was made by a civilized and educated people . . . [t]o give . . . the ignorant and lawless brigands that infest Puerto Rico . . . the benefit of such immunities from the sharp and sudden justice—or injustice— . . . [would] be a serious obstacle to the maintenance there of an efficient government.”¹³⁴ It is impossible to thoughtfully analyze the Insular Cases without recognizing this prejudiced background against which the cases were decided.

The Insular Cases were tax claims that sought to clarify the

129 *Id.*

130 Gelpí, *supra* note 101, at 23.

131 *Id.* at 22. United States v. Vaello Madero, 596 U.S. ____ (2022) (Gorsuch, J., concurring) (“The flaws in the Insular Cases are as fundamental as they are shameful. . . The Insular Cases can claim support in academic work of the period, ugly racial stereotypes, and the theories of social Darwinists. But they have no home in our Constitution or its original understanding. . . The Insular Cases’ departure from the Constitution’s original meaning has never been much of a secret. . . [but] [b]ecause no party asks us to overrule the Insular Cases to resolve today’s dispute, I join the Court’s opinion [citing the Insular Cases as precedent].”)

132 *See e.g.* Vaello Madero, 596 U.S. ____.

133 *See* Torruella, *supra* note 98, at 297–98; U.S. CONST. amend. XIV.

134 Simeon E. Baldwin, *The Constitutional Questions Incident to the Acquisition and Government by the United States of Island Territory*, 12 HARV. L. REV. 393, 415 (1899).

application of tariff law to the newly acquired colonies after the end of the Spanish-American war.¹³⁵ During the transition of power, various decrees were put in place to ensure the collection of duties. From April 1898 to April 1900, various tariff laws affecting Puerto Rico were put into place, until the Foraker Act took effect on May 1, 1900, as the final administrative document to deal with the newly acquired territories.¹³⁶ The transition of power prompted legal questions about the application of tariff laws, when and how duties were collected, or if Puerto Rico and the Philippines were now considered annexed under the definitions provided in tariff law for collections of goods imported from different states versus foreign countries.¹³⁷ All these cases were decided during the Court's session in May 1901.¹³⁸

In *DeLima v. Bidwell*, the U.S. Supreme Court determined that Puerto Rico was not a foreign country within the meaning of applicable tariff law at the time.¹³⁹ In the case of *Goetze v. United States*, which was decided along with *Crossman v. United States*, the U.S. Supreme Court reviewed two decisions of the board of general appraisers that had determined that both Puerto Rico and Hawai'i were subject to tax duties as foreign countries.¹⁴⁰ The court decided that the board had no jurisdiction to make that determination based on the decision of *DeLima*, since neither island was considered a foreign country subject to import taxes.¹⁴¹

Dooley was one of the most significant cases because the claimant argued that they had been doing business between New York and Puerto Rico since 1898, even before the ratification of the Treaty of Paris which brought the Spanish-American War to its end.¹⁴² Dooley, Smith & Co. sought to recover duties paid under protest at the port of San Juan, Puerto Rico, over goods imported into the island from New York.¹⁴³ The court decided that the duties which were collected and directed to a fund to support the creation of a local government in the island were legally exacted.¹⁴⁴ The court came to this decision for two reasons: First, although Puerto Rico was not considered

135 Vignarajah, *supra* note 125, at 784 n.12.

136 See *Dooley v. United States*, 182 U.S. 222, 230 (1901).

137 See Henry M. Hoyt, *The Final Phase of the Insular Tariff Controversy*, 14 YALE L.J. 333, 333–34 (1905); Ann J. Davidson, *A Credit for All Reasons: The Ambivalent Role of Section 936*, 19 U. MIA. INTER-AM. L. REV. 97, 101–04 (1987).

138 See, e.g., *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Goetze v. United States*, 182 U.S. 221 (1901).

139 182 U.S. at 200.

140 *Goetze*, 182 U.S. at 221–22.

141 *Id.*

142 *Dooley v. United States*, 182 U.S. 222, 230 (1901); *Treaty of Paris of 1898*, LIBR. CONG. (June 22, 2011), <https://loc.gov/rr/hispanic/1898/treaty.html>.

143 *Dooley*, 182 U.S. at 223.

144 *Id.* at 230–31.

a foreign country in terms of tariff laws, the commercial activities cited in the case were partly carried out before Puerto Rico became a U.S. territory during the transition of power; and second was because the duties collected were directed to a separate fund that benefited the provisional government of the island.¹⁴⁵

In *Armstrong*, similarly to *Dooley*, the petitioner sought to recover duties exacted by the collector of the port of San Juan upon goods, wares, and merchandise produced and manufactured in the U.S.¹⁴⁶ This case was decided alongside *Dooley* with the same result for both:

In *Dooley v. United States* . . . the Court held that before the ratification of the Treaty of Paris, duties that had been levied on exports to Puerto Rico were lawfully collected by the military commander and the President under the war power. After ratification of the treaty, however, Puerto Rico “ceased to be a foreign country,” and hence export levies were invalid *Armstrong v. United States* concerned taxes imposed upon imports received into San Juan; the Court upheld “duties exacted by the collector of the port of San Juan” on goods imported from the United States because the territories were not states subject to the Uniformity Clause.¹⁴⁷

When determining if Puerto Rico and other U.S. territories were subject to constitutional protections in matters of import taxes in *Downes*, the U.S. Supreme Court determined that Puerto Rico was not subject to normal customs levied on imports from foreign countries since the ratification of the Treaty of Paris.¹⁴⁸ However, the court held that the Uniformity Clause of the Constitution, which provides that “all duties, imposts, and excises shall be uniform throughout the United States,” did not apply to unincorporated territories, which created a clear distinction between the incorporated states, which enjoy of full rights within the constitution, and creating a second-class citizenship to those in non-incorporated territories.¹⁴⁹ This established a de facto discrimination between states and territories’ citizenship and access to rights for their citizens.

Huus v. New York & PRSS Co. brought up the matter of whether commerce between Puerto Rico and the mainland U.S. should be considered domestic or foreign during the transition of power over the island.¹⁵⁰ The Court determined that trade with Puerto Rico was “properly a part of

145 *Id.* at 230–35.

146 *Armstrong v. United States*, 182 U.S. 243, 244 (1901).

147 Vignarajah, *supra* note 125, at 794.

148 *Downes v. Bidwell*, 182 U.S. 244, 248–49 (1901).

149 *See id.* at 248–49, 286–87 (quoting U.S. CONST. art. I, § 1, cl. 1).

150 *Huus v. N.Y. & P.R. S.S. Co.*, 182 U.S. 392, 395 (1901).

domestic trade of the country” because of its annexation proclaimed in the Treaty of Paris.¹⁵¹

When *Dooley* was reexamined by the U.S. Supreme Court in December 1901, it determined that the Foraker Act, which imposed a duty of fifteen percent of the amount of duties paid upon merchandise imported from foreign countries going into Puerto Rico, was constitutional.¹⁵² This decision limited the Constitutional protection that no tax or duty shall be laid on articles exported from any states, applying it only to articles exported to a foreign country, which did not apply to Puerto Rico.¹⁵³ The court also examined the purpose of the duties collected, which did not go to the general Treasury but were put into a separate fund dedicated to the establishment of a local government in Puerto Rico.¹⁵⁴ This is important because according to the court’s decision, the tax was not intended as a duty on exports but as an action of Congress to legislate on the newly acquired territory.¹⁵⁵

Through these cases, the U.S. Supreme Court created the figure of unincorporated territories and legitimized their treatment of territorial citizens with a biased application of certain laws and the denial of constitutional protections that should have applied had the territories been fully annexed. In its treatment of the Philippines, Hawai’i, and Puerto Rico, the Court established that citizens of the unincorporated territories of Hawai’i and Puerto Rico were not entitled to certain constitutional rights that were not considered fundamental. The repercussion of this type of ruling is that it not only relegated the rights of the people of Puerto Rico in their enjoyment of rights that citizens of incorporated territories enjoy, but it also established the standing for delimitating fundamental rights.

C. *The Legacy of the Insular Cases*

Between 1903 and 1922, the U.S. Supreme Court went on to decide several more cases related to commerce and the application of laws versus constitutional protections in issues dealing with its territories.¹⁵⁶ This, of course, adversely affected certain sectors of the population in Puerto Rico more than others, such as the case of *Morales v. La Junta Local de Inscripciones*.¹⁵⁷ In *Morales*, the Puerto Rico Supreme Court held that the Nineteenth

151 *Id.* at 396.

152 *Dooley v. United States*, 183 U.S. 151, 154–55, 164 (1901).

153 *Id.* at 154–55.

154 *Id.* at 157.

155 *Id.* at 156.

156 *See Gelpí, supra* note 101, at 23.

157 33 P.R. Dec. 79 (1924).

Amendment, which grants suffrage rights to women, was not a fundamental right.¹⁵⁸ Hence, women in Puerto Rico were not entitled to vote at the time. Another important repercussion of the Insular Cases occurred between 1978 and 1980, when the U.S. Supreme Court relied on this jurisprudence to dismiss “constitutional challenges against significant discrimination in Social Security and federal welfare programs to U.S. citizens residing in Puerto Rico.”¹⁵⁹

The U.S. Supreme Court’s interpretation of the Insular Cases has been inconsistent.¹⁶⁰ In 1901, the Court held that Hawai’i, Puerto Rico, and the Philippines were unincorporated territories when the U.S. acquired them in 1898.¹⁶¹ The Insular Cases set them to be under the same circumstances and rights. However, in *Hawai’i v. Mankichi*, the Court held that Hawai’i became incorporated according to the Hawai’i Organic Act of 1900, which granted citizenship to native Hawai’ians.¹⁶² This case may lead to the reasonable inference that the grant of citizenship inevitably leads to incorporation. However, this was not the case for the citizens of Puerto Rico, who were granted citizenship under the 1917 Organic Act, but were not afforded statehood.¹⁶³ Yet, in the 1922 case, *Balzac v. Porto Rico*, the U.S. Supreme Court backtracked and held that this identical congressional act did not “incorporate” Puerto Rico.¹⁶⁴ In the 9-0 opinion, Puerto Ricans and Filipinos were described as “living in compact and ancient communities, with definitely formed customs and political conceptions.”¹⁶⁵ Writing for the majority, Justice Taft also concluded that “[Puerto Rico was a] distant ocean community of a different origin and language from those of our continental people,” making a clear, discriminatory distinction between these territories with predominantly people of color.¹⁶⁶

Even more, Congress continued to treat U.S. territories differently after the Insular Cases decisions.¹⁶⁷ For example, Congress never established a U.S. territorial court in the Philippines as they did in Hawai’i and Puerto Rico, which may have implied an intention to incorporate Hawai’i and Puerto Rico after their insurrection.¹⁶⁸ Additionally, Congress did not

158 *Id.* at 90–91.

159 Gelpí, *supra* note 101, at 23.

160 *Id.*

161 *Id.*

162 *Id.*

163 *Id.*

164 *Id.*

165 *Id.*

166 *Balzac v. Porto Rico*, 258 U.S. 298, 311 (1922); Gelpí, *supra* note 101, at 23.

167 Gelpí, *supra* note 101, at 23.

168 *See id.*

grant U.S. citizenship to Filipinos, and by 1946, the Philippines became independent.¹⁶⁹ Hawai'i, another island territory, was an incorporated U.S. territory until 1959 when Congress approved the Hawai'ian Constitution, admitted the state to the union, and established an Article III U.S. district court in Hawai'i.¹⁷⁰

Puerto Rico, however, was treated quite differently than Hawai'i, as Gustavo Gelpí, First Circuit judge and former judge for the District of Puerto Rico explains:

In 1952, seven years before the approval of Hawai'i's Constitution and admission as a state, Congress approved Puerto Rico's Constitution, which provided for a republican form of government, thus establishing the Commonwealth of Puerto Rico. Notwithstanding, coetaneous with this act, Congress did not admit Puerto Rico into the union Rather, as House Majority Leader John McCormack would put it, Puerto Rico became "a new experiment; it is turning away from the territorial status; it is something intermediary between the territorial status and statehood." A decade and a half later, in 1966, Congress transformed the U.S. territorial court in Puerto Rico into an Article III U.S. District Court, "because the Federal District Court in Puerto Rico 'is in its jurisdiction, powers and responsibilities the same as the U.S. District Courts in the (several) states.'" To date, this court . . . is the only Article III court to be created by Congress for any of the overseas territories acquired by the United States since 1898. . . [I]n Hawai'i, as in all other 49 states of the union, no Article III court was established until actual statehood.¹⁷¹

Although deemed a commonwealth and given an Article III District Court, Puerto Rico remained, and remains, an outlier among the acquired Spanish colonies with its in-between status.

Despite Puerto Rico becoming a commonwealth in 1952, its citizens still struggle with the degrading "ripple effects of the Insular Cases doctrine [which] continue to foster a separate and unequal treatment to U.S. citizens therein."¹⁷² Amongst these discriminatory practices that burden the citizens of Puerto Rico, is the unequal distribution of public services, particularly those within the scope of public health.¹⁷³

169 *Id.*

170 *Id.*

171 *Id.*

172 *Id.* at 24.

173 *See* Rivera Joseph et al., *supra* note 6, at 1514–16.

III. GOVERNANCE AND SELF-DETERMINATION IN HAWAII, MASSACHUSETTS, AND PUERTO RICO

The importance of governance and self-determination for the development and fulfillment of Puerto Rico's population has become clearer as the discriminatory policies that Puerto Rico has been subjected to since being a Spanish colony continue.¹⁷⁴ These political concepts play an imperative role in shaping the management of government and society and are closely tied to society's ability to organize their public structures in a way that best serves its individuals. Through their federalism and state sovereignty clauses, both Hawai'i and Massachusetts, amongst the rest of the U.S. states, enjoy governance and self-determination as protected under the U.S. Constitution—powers that are denied to its colonies, such as Puerto Rico.¹⁷⁵

It is assumed that each state and territory of the U.S. has a degree of sovereignty, but this is not the case with Puerto Rico.¹⁷⁶ The archipelago has restricted participation in the distribution of its resources through the establishment of the fiscal control board.¹⁷⁷ This board, not elected by the citizens of Puerto Rico, determines the government's priorities in its assignment of available resources on the island, and prioritizes, as it is called to do by Congress, the repayment of a debt rather than the development and growth of a healthcare system that is so desperately needed.¹⁷⁸

Before delving into the comparison, it is important to explain our selection of Massachusetts, Puerto Rico, and Hawai'i in this endeavor. The Merriam-Webster dictionary defines "commonwealth" as a political unit in which supreme authority is vested in the people of such place to make determinations within their autonomy.¹⁷⁹ However, this dictionary also singles out Puerto Rico as almost an anomaly among commonwealths, in also defining that a commonwealth is a "political unit having local authority but voluntarily united with the U.S. – used officially of Puerto Rico . . ." ¹⁸⁰

Hawai'i was a territory separated by oceanic distance like Puerto Rico, but unlike Puerto Rico, Hawai'i obtained statehood allowing them to

174 *See id.* at 1513.

175 *See* KENNETH R. THOMAS, CONG. RSCH. SERV., RL30315, FEDERALISM, STATE SOVEREIGNTY, AND THE CONSTITUTION: BASIS AND LIMITS OF CONGRESSIONAL POWER 1–3 (2013), <https://sgp.fas.org/crs/misc/RL30315.pdf>.

176 Cabán, *supra* note 22.

177 *Id.*

178 *Id.*

179 *Commonwealth*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/commonwealth> (last visited Apr. 14, 2022).

180 *Id.*

have all the rights reserved to states of the union, which Puerto Rico doesn't have under its colonial status.¹⁸¹ Similarly, the title of "commonwealth" carries with it certain privileges, as explained above, and Massachusetts has those rights, but Puerto Rico does not, even though it is called a commonwealth.¹⁸² Because of Hawaii's similar geography and history to Puerto Rico, and Massachusetts's shared title of commonwealth, we chose to use these two states in comparison with Puerto Rico.

IV. EXAMINING THE HEALTHCARE SYSTEM IN THE UNITED STATES

The health sector in the U.S. has often been characterized by its systemic fragmentation caused by "escalating complexity and heterogeneity of healthcare delivery systems."¹⁸³ There are no national standards, policies, or even entities managing the nation's system, leaving each state free to govern and determine the best ways to deliver care.¹⁸⁴ As put forth by the Commonwealth Fund Commission report, a high-performing system should include, among other things, access to information, patient access to care, and continued innovation.¹⁸⁵ The aspiration should be to have a centralized, high functioning system that utilizes the resources available to grant access to services for its citizens, allowing some room for each state to determine its specific needs for allocation of resources. However, leaving all healthcare decisions to each state results in a system so fragmented that this is not possible.¹⁸⁶ Accordingly, how is it possible to compare systems that are, by nature, so fragmented and different from one another?

In answering this question, researchers developed a preliminary framework to compare and analyze healthcare delivery systems within our complex and fragmented systems.¹⁸⁷ Created by Dr. Ileana L. Piña and her team, the framework clusters various elements of health care delivery systems into different domains to provide a foundation for better understanding healthcare systems and standardize the analysis and

181 See Torruella, *supra* note 98, at 288–89.

182 See *Commonwealth*, *supra* note 179.

183 Kurt C. Stange, *The Problem of Fragmentation and the Need for Integrative Solutions*, 7 ANNALS FAM. MED. 100, 100–03 (2009); Ileana L. Piña et al., *A Framework for Describing Health Care Delivery Organizations and Systems*, 105 AM. J. PUB. HEALTH 670, 670 (2015).

184 Anthony Shih et al., *Organizing the U.S. Health Care Delivery System for High Performance*, COMMONWEALTH FUND, at ix (2008), <https://www.commonwealthfund.org/publications/fund-reports/2008/aug/organizing-us-health-care-delivery-system-high-performance>.

185 *Id.* at ix–x.

186 See *id.* at 16–18.

187 Piña et al., *supra* note 183, at 671.

comparison of different health care delivery systems.¹⁸⁸ Piña and her team ultimately categorized elements of health care delivery systems into six different domains: (1) capacity, (2) organizational structure, (3) finances, (4) patients, (5) care processes and infrastructure, and (6) culture.¹⁸⁹ Under this framework, researchers can categorize elements of dissimilar health care delivery systems into these broader domains to compare the systems through a more uniform framework.¹⁹⁰

Basing our analysis in two of the specific domains from Dr. Piña's framework, this paper, like Dr. Piña's, will "characterize potentially important differences in structure and function of delivery organizations and systems" governance and self-determination.¹⁹¹ We analyze healthcare delivery systems in Puerto Rico, Hawai'i, and Massachusetts through two of these domains: (1) finances and (2) care processes and infrastructure.¹⁹² For our purposes, the analysis of the "finances" domain will include a review of allocation of funds (i.e. healthcare spending distribution), finances for innovation, preventive services, public health interventions, access to care, and the maintenance of data and access to it. The analysis of the "care process and infrastructure" domain will include a review of the ability for the coordination of services (preventive and interventions), public reports, settings to provide services (hospitals available, their specialty, rate of beds), and quality of services.¹⁹³ The elements reviewed in each domain when analyzing and comparing each state's governance and self-determination will aid in understanding how states may better serve their healthcare structures and provide the needed care to their citizens.

188 *Id.* at 678.

189 *Id.* at 672.

190 *See id.* at 670.

191 *Id.* at 678.

192 *Id.* at 672.

193 The operational definitions of the domains examined in this paper were inspired by Dr. Piña and her team. *See id.* This paper's analysis will only cover the listed topics within each domain. Each domain has many subject matters that could be examined to shed light on the structure of that domain within a state. These chosen domains, however, are those that have a sufficient availability of data to compare between the three states.

V. AN EXAMINATION OF FINANCES AND CARE PROCESSES AND STRUCTURE TO DETERMINE THE EFFECTIVENESS OF HEALTHCARE DELIVERY

A. Economic and Population Context

This section will compare economic data across Puerto Rico, Massachusetts, and Hawai'i. Economic and population data provides important context to the effective delivery of healthcare across all three locations. In particular, this section will discuss gross domestic product, healthcare expenditures and outcomes, and household income and poverty.

1. Gross Domestic Product (GDP)

The resources available to a state are often determinative of its ability to adequately serve its citizens' needs and provide a higher standard of living.¹⁹⁴ As demonstrated by the data below, Puerto Rico has many fewer resources per capita in comparison to Hawai'i and Massachusetts, putting it at a disadvantage.

Table 1: GDP and Population¹⁹⁵

<i>2019 Statistics</i>	Puerto Rico	Massachusetts	Hawai'i
<i>Population (in millions)</i>	3.194	6.893	1.416

194 See Patrick Flavin, *State Government Public Goods Spending and Citizens' Quality of Life*, 78 SOC. SCI. RSCH. 28, 34–35 (2019); Meetings Coverage, General Assembly, World's Poorest Nations Left Behind in Reaching Sustainable Development Goals, Delegates Stress as Second Committee Begins General Debate, U.N. Meetings Coverage GA/EF/3495 (Oct. 8, 2018), <https://www.un.org/press/en/2018/gaef3495.doc.htm>; David H. Peters et al., *Poverty and Access to Health Care in Developing Countries*, 1136 ANNALS N.Y. ACAD. SCI. 161, 161 (2008).

195 2019 *National and State Population Estimates*, U.S. CENSUS BUREAU (Dec. 30, 2019), <https://www.census.gov/newsroom/press-kits/2019/national-state-estimates.html> (click the second link under "Tables" titled "NST-EST2019-01: Table 1. Annual Estimates of the Resident Population for the United States . . ." to view population data of U.S. states and Puerto Rico); *SAGDP1 Gross Domestic Product (GDP) Summary, Annual by State*, BUREAU ECON. ANALYSIS, https://apps.bea.gov/iTable/iTable.cfm?reqid=70&step=30&isuri=1&major_area=0&area=xx&year=2019&tableid=531&category=1531&area_type=0&year_end=-1&classification=non-industry&state=0&statistic=3&yearbegin=-1&unit_of_measure=levels (Mar. 31, 2022); *GDP (Current US\$) - Puerto Rico*, WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=PR> (last visited Apr. 10, 2022).

<i>GDP (in USD)</i>	\$104.915 billion	\$593.257 billion	\$91.781 billion
<i>GDP per capita (in USD)</i>	\$32,847.53	\$86,066.59	\$64,817.09

One of the principal factors behind Puerto Rico's economic catastrophe is its government's debt burden, which at this time is over \$70 billion.¹⁹⁶ To make matters worse, because of its colonial status, Puerto Rico is explicitly excluded from filing for Chapter 9 bankruptcy as a means of restructuring its debt.¹⁹⁷ Puerto Rico's debt crisis ultimately led Congress to enact the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), which led to the creation of a fiscal control board to oversee Puerto Rico's budget and guarantee the payment of the debt.¹⁹⁸ PROMESA is legislation passed by Congress to address the fiscal crisis in Puerto Rico and guarantee payment of debts.¹⁹⁹ PROMESA, among other measures, affects minimum wages and imposes harmful austerity measures throughout government institutions, including the healthcare system.²⁰⁰

PROMESA also established a control board to administer the archipelago's finances. This board was not elected by Puerto Rican citizens and was imposed upon the archipelago by the federal government with the purpose of structuring its budget to pay off its debt rather than structuring the budget to the needs of Puerto Ricans.²⁰¹ The board provides an alternate institution that governs the affairs of the archipelago within the framework of an established government structure, albeit one imposed by another

196 D. ANDREW AUSTIN, CONG. RSCH. SERV., R46788, PUERTO RICO'S PUBLIC DEBTS: ACCUMULATION AND RESTRUCTURING 1 (2021), <https://sgp.fas.org/crs/row/R46788.pdf>.

197 11 U.S.C. § 101(52) ("The term 'State' includes . . . Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title."); *see also* Puerto Rico v. Franklin Cal. Tax-Free Tr., 579 U.S. 115, 125 (2016); Laura Sullivan, *How Puerto Rico's Debt Created a Perfect Storm Before the Storm*, NPR (May 2, 2018), <https://www.npr.org/2018/05/02/607032585/how-puerto-ricos-debt-created-a-perfect-storm-before-the-storm>.

198 *See* Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), Pub. L. No. 114-187, 130 Stat. 549 (2016) (codified as amended in scattered sections of 48 U.S.C.).

199 *PROMESA Frequently Asked Questions*, U.S. DEP'T LAB., <https://www.dol.gov/agencies/whd/flsa/puerto-rico/faq> (last visited Apr. 4, 2022).

200 *See id.*; NATALIA RENTA ET AL., PROMESA HAS FAILED: HOW A COLONIAL BOARD IS ENRICHING WALL STREET AND HURTING PUERTO RICANS, CTR. FOR POPULAR DEMOCRACY, at iii–iv (2021), <https://www.populardemocracy.org/sites/default/files/%5BENGLISH%5D%20PROMESA%20Has%20Failed%20Report%20CPD%20ACRE%209-14-2021%20FINAL.pdf>.

201 *See* PROMESA §§ 101(a), 101(e), 201(a), 201(b).

country in a grossly antidemocratic manner.²⁰² The decisions of this board resulted in budget cuts that have substantially affected, and will continue to affect, the healthcare sector and other government sectors.²⁰³

Similar to other governmental institutions, the implementation of the fiscal control board can be examined under the analysis of governance. This analysis can demonstrate how alternative governing institutions may not always compliment the established structure to provide better outcomes. On the contrary, adding another bureaucratic step to the governing processes, specifically in the distribution of resources, has proven detrimental to public health outcomes in Puerto Rico.²⁰⁴ The way in which an alternate governance organization is created and how it participates in the governing processes depends on the established framework already operating in a society.²⁰⁵ If the government and other established structures are overruled by an imposed set of governing institutions, then the work done to govern the people is not born from the peoples' needs and reality, but from the perceived reality of the power that imposes antidemocratic governing bodies.²⁰⁶ Such is the reality of the colonial status to which Puerto Rico continues to be subjected to as it faces imposed obstacles from the U.S. government that hinder its ability to provide appropriate solutions to the island's social needs.²⁰⁷

2. Healthcare Expenditures and Health Outcomes

Of particular importance in a state's allocation of funds is its healthcare expenditures. Indeed, "[a] strong and positive correlation between healthcare expenditure and GDP has been the consistent finding of research."²⁰⁸ The WHO, in an examination of the health sector in Europe,

202 See *id.* §§ 101(c), 101(d), 303.

203 RENTA ET AL., *supra* note 200, at 27–30.

204 See Alison Chopel et al., *Relationships Between Distribution of Disaster Aid, Poverty, and Health in Puerto Rico*, NAT. HAZARDS CTR. (2021), <https://hazards.colorado.edu/public-health-disaster-research/relationships-between-distribution-of-disaster-aid-poverty-and-health-in-puerto-rico> (“Greater disaster-associated fatalities and larger amounts of disaster aid were both associated with greater acceleration of poverty. . . . [O]ur findings suggest that both disaster aid and infectious diseases travel along these same channels and in the process deepen them.”).

205 See Ángel R. Oquendo, *At Rock Bottom: Puerto Rico's Crises and Self-Determination*, 41 HARBINGER 255, 256–59 (2017).

206 See SAMUEL P. HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* 1–2 (1968).

207 See Pedro Cabán, *Puerto Rico, Colonialism in*, in 3 *THE OXFORD ENCYCLOPEDIA OF LATINOS & LATINAS IN THE UNITED STATES* 516, 519–20 (Suzanne Oboler & Deena J. González eds., 2005).

208 Seyed Nezamuddin Makiyan et al., *Does Health Care Expenditure Affect Economic Growth? Evidence from Selected Asian Countries*, 12 J. INT'L RELS. 73, 73 (2014).

found that the health sector is crucial to ascertaining both the economic production and stability of a country.²⁰⁹ Further, the WHO examined how allocating resources to effective healthcare systems can provide social benefits to a population such as generating less social exclusion and more opportunities for development.²¹⁰

When examining the foundations of a state's health care delivery system and its ability to properly serve its citizens and respond to a public health emergency, understanding the economic resources available to the state is essential in better understanding its limitations in public expenditures.²¹¹ In addition to the economic resources available, governance and self-determination to produce, secure, and determine the distribution of such resources is essential for better population health outcomes.²¹²

In a 2017 report, the Department of Health and Human Services found that “[t]he 3.5 million Americans living in the Commonwealth of Puerto Rico do not have access to a healthcare system considered standard in the rest of the nation.”²¹³ This discrepancy is likely explained, in part, by Puerto Rico's lack of expenditures on healthcare. Reflective of the states' GDP per capita, Puerto Rico's health expenditure per capita is alarmingly low in comparison to Hawai'i, Massachusetts, and the average in the mainland U.S.:²¹⁴

209 Tammy Boyce & Chris Brown, *Economic and Social Impacts and Benefits of Health Systems*, WORLD HEALTH ORGANIZATION [WHO] 1 (2019), <https://apps.who.int/iris/bitstream/handle/10665/329683/9789289053952-eng.pdf>.

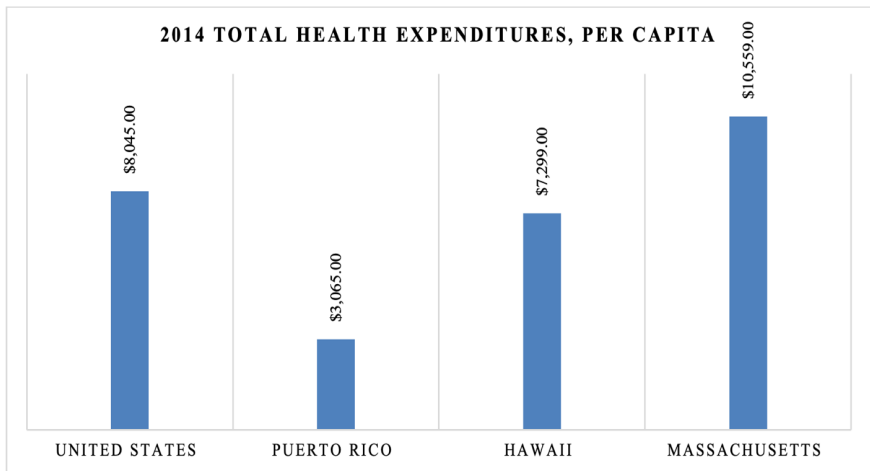
210 *Id.* at 1, 5.

211 See OFF. OF THE ASSISTANT SEC'Y FOR PLAN. & EVALUATION, DEP'T OF HEALTH & HUM. SERVS., EVIDENCE INDICATES A RANGE OF CHALLENGES FOR PUERTO RICO HEALTH CARE SYSTEM 3–4 (2017), https://aspe.hhs.gov/system/files/pdf/255466/PuertoRico_Assessment.pdf.

212 Orielle Solar & Alec Irwin, *A Conceptual Framework for Action on the Social Determinants of Health*, WORLD HEALTH ORGANIZATION [WHO] 4 (2010), https://apps.who.int/iris/bitstream/handle/10665/44489/9789241500852_eng.pdf?sequence=1&isAllowed=y.

213 OFF. OF THE ASSISTANT SEC'Y FOR PLAN. & EVALUATION, *supra* note 211, at 1–2.

214 See Krista Perreira et al., *Environmental Scan of Puerto Rico's Health Care Infrastructure*, URB. INST. 6 (Jan. 2017), https://www.urban.org/sites/default/files/publication/87016/2001051-environmental-scan-of-puerto-ricos-health-care-infrastructure_1.pdf; *Health Care Expenditures per Capita by State of Residence*, KAISER FAM. FOUND., <https://www.kff.org/other/state-indicator/health-spending-per-capita/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited Apr. 10, 2022).

Figure 1: Health Expenditures per Capita²¹⁵

Since 2010, Puerto Rico has shown a decline in healthcare expenditures per capita as compared to the national average, Hawai'i, and Massachusetts.²¹⁶

These discrepancies between Puerto Rico and the mainland U.S. do not only exist at an expenditures level; health outcomes among the populations vary drastically, too. Despite the fact that the life expectancy in Puerto Rico is similar to that of the mainland U.S., the percentage of adults reporting fair to poor health is higher in Puerto Rico than it is in the U.S. (thirty five percent compared to eighteen percent).²¹⁷ Moreover, Puerto Rico's residents have a higher prevalence of heart attacks and heart disease, diabetes, depression, disability, low birth-weight infants, higher infant mortality rate, and higher numbers of people living with HIV than the U.S. overall.²¹⁸ Puerto Rico has also suffered outbreaks of viral diseases for the

215 Perreira et al., *supra* note 214, at 6; *Health Care Expenditures per Capita by State of Residence*, *supra* note 214. The data used is from 2014 since Puerto Rico has not made readily available on its publications—for the general public at least—any more recent data of the distribution of their health care expenditures at the time this research paper was written. To have a fair comparison (per annual expenditures) data from 2014 was used for all states to match distribution of resources at a particular time in history for all three states.

216 Perreira et al., *supra* note 214, at 6; *Health Care Expenditures per Capita by State of Residence*, *supra* note 214.

217 Perreira et al., *supra* note 214, at 7.

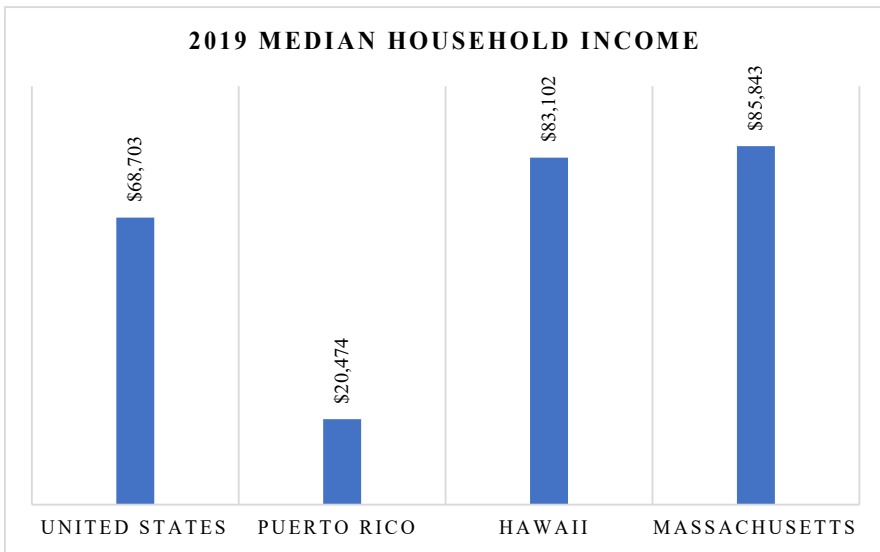
218 Robin Rudowitz & Julia Foutz, *Navigating Recovery: Health Care Financing and Delivery Systems in Puerto Rico and US Virgin Islands*, KAISER FAM. FOUND. (Dec. 20, 2017), <https://www.kff.org/medicaid/issue-brief/navigating-recovery-health-care-financing-and->

last several years, including the Zika virus epidemic, where the majority of cases in the U.S.—eighty-four percent—were reported in Puerto Rico.²¹⁹

3. Household Income and Poverty

Much like the archipelago, Puerto Ricans' individual resources fall behind those available to mainland U.S. citizens. In Puerto Rico, the median household income is significantly lower than that of the mainland U.S.²²⁰ Massachusetts and Hawai'i both have median incomes over four times that of Puerto Rico.²²¹

Figure 2: Median Household Income²²²



delivery-systems-in-puerto-rico-and-us-virgin-islands/.

219 Josh Michaud & Jennifer Kates, *Public Health in Puerto Rico After Hurricane Maria*, KAISER FAM. FOUND. (Nov. 17, 2017), <https://www.kff.org/other/issue-brief/public-health-in-puerto-rico-after-hurricane-maria/>.

220 *Compare Puerto Rico*, DATA USA, <https://datausa.io/profile/geo/puerto-rico/> (last visited Mar. 31, 2022), with *United States*, DATA USA, <https://datausa.io/profile/geo/united-states> (last visited Mar. 31, 2022).

221 *Puerto Rico*, *supra* note 220; *2019 Median Household Income in the United States*, U.S. CENSUS BUREAU (Sept. 17, 2020), <https://www.census.gov/library/visualizations/interactive/2019-median-household-income.html>.

222 Jonathan Rothbaum, *Census Bureau Still Studying Full Impact of Pandemic on Income Data*, U.S. CENSUS BUREAU (Sept. 15, 2020), <https://www.census.gov/library/stories/2020/09/was-household-income-the-highest-ever-in-2019.html>.

Puerto Rico's poverty rate is also much higher than even the poorest state in the U.S.²²³ In 2019, just before the start of the COVID-19 pandemic, the national U.S. poverty rate was 11.7%, only about half that of Mississippi—the state with the highest poverty rate—which had a rate of 19.6%.²²⁴ In that same year, Puerto Rico had a poverty rate of 43.5%, nearly four times the average in mainland U.S., and more than double Mississippi's poverty rate.²²⁵

It is essential to understand the magnitude of these statistics to analyze underlying factors that contribute to Puerto Rico's funding distributions. In Puerto Rico, there is “extreme poverty, extreme deprivation, high dependence on public programs, [and] gross underfinancing of public programs to the point that the underfunding of the healthcare system is one of the major factors associated with their economic crisis before the hurricane.”²²⁶ Yet, these egregious conditions are only symptoms caused by the underlying absence of governance and self-determination. Despite this, the absence of these essential factors is seemingly not considered when examining Puerto Rico's poor infrastructure and the power to change it.²²⁷

B. *Differences in Finances and Care Processes and Infrastructure*

This section will look at healthcare financing and care processes across Puerto Rico, Massachusetts, and Hawai'i. Differences in funding and healthcare infrastructure help provide insight into a state's ability to provide effective healthcare. Specifically, this section will discuss differences in federal financing for healthcare, state plans for healthcare improvement, and care processes and infrastructures across all three states.

223 Brian Glassman, *A Third of Movers from Puerto Rico to the Mainland United States Relocated to Florida in 2018*, U.S. CENSUS BUREAU (Sept. 26, 2019), <https://www.census.gov/library/stories/2019/09/puerto-rico-outmigration-increases-poverty-declines.html>.

224 JOSEPH DALAKER, CONG. RSCH. SERV., R46759, POVERTY IN THE UNITED STATES IN 2019, at 9, 13 (2021), <https://sgp.fas.org/crs/misc/R46759.pdf>. While the official poverty rate was 10.5%, the Supplemental Poverty Measure (SPM) “takes into account greater detail of individuals’ and families’ living arrangements and provides a more up-to-date accounting of the costs and resources available to them” and, in doing so, found a 11.7% poverty rate. *Id.* at 13.

225 *Id.* at 9–10, 13.

226 Shanoor Seervai, *How Hurricane Maria Worsened Puerto Rico's Health Care Crisis*, COMMONWEALTH FUND (Dec. 18, 2017), <https://www.commonwealthfund.org/publications/other-publication/2017/dec/how-hurricane-maria-worsened-puerto-ricos-health-care#1>.

227 Oquendo, *supra* note 205, at 257–59.

1. Federal Finances for Healthcare

Although Puerto Rico is part of federal programs meant to help provide access to health care services for low-income individuals, its ability to take advantage of these programs is limited by its colonial status. Specifically, because of the Insular Cases and the perpetuation of colonialism in Puerto Rico, “these programs are applied differently to the approximately 4 million U.S. citizens who reside in the territories compared with those residing in the 50 states and the District of Columbia.”²²⁸ As demonstrated by health reports from Puerto Rico, in comparison to other states, health expenditures in both the private and public sector have been in decline for years.²²⁹

Medicaid and Medicare are two of the foremost government programs in the U.S. that provide health coverage to low-income and elderly individuals, respectively. Medicaid is funded at both the federal and state level, and provides health coverage to eligible low-income adults, children, elders, and people with disabilities.²³⁰ Medicare, alternatively, is funded mostly through payroll taxes and general revenue, and is the federal health insurance plan for people aged sixty-five or older, certain younger people with disabilities, and those with end stage renal disease.²³¹ Although Medicare and Medicaid are federal government programs, states such as Hawai’i and Massachusetts are not subject to statutory caps or fixed matching rates like Puerto Rico and other U.S. territories.²³²

Unlike other states, funding for Medicaid in Puerto Rico is not adjusted for the cost of living, leaving qualifying residents’ health care needs

228 Orlando Rodríguez-Vilá et al., *Healthcare Disparities Affecting Americans in the US Territories: A Century-Old Dilemma*, 130 AM. J. MED. e39 (2017); Efrén Rivera Ramos, *The Legal Construction of American Colonialism: The Insular Cases (1901-1922)*, 65 REV. JUR. U. P.R. 225 (1996).

229 Krista Perreira et al., *Puerto Rico Health Care Infrastructure Assessment*, URB. INST. 16 (Jan. 2017), https://www.urban.org/sites/default/files/publication/87011/2001050-puerto-rico-health-care-infratructure-assessment-site-visit-report_1.pdf (“[I]nterviewees indicated that the lack of resources available to invest in health care infrastructure hinders attempts to improve the quality of care in Puerto Rico.”).

230 MEDICAID.GOV, <https://www.medicaid.gov/medicaid/index.html> (last visited Apr. 13, 2022).

231 *What’s Medicare?*, MEDICARE.GOV, <https://www.medicare.gov/what-medicare-covers/your-medicare-coverage-choices/whats-medicare> (last visited Apr. 4, 2022); Juliette Cubanski et al., *The Facts on Medicare Spending and Financing*, KAISER FAM. FOUND. (Aug. 20, 2019), <https://www.kff.org/medicare/issue-brief/the-facts-on-medicare-spending-and-financing/>.

232 Robin Rudowitz et al., *Medicaid Financing Cliff: Implications for the Health Care Systems in Puerto Rico and USVI*, KAISER FAM. FOUND. (May 21, 2019), <https://www.kff.org/medicaid/issue-brief/medicaid-financing-cliff-implications-for-the-health-care-systems-in-puerto-rico-and-usvi/>.

underfunded.²³³ These limits on available funding diminish the government capacity to provide necessary services to eligible individuals. Even though services are needed, there might not be funding to cover such services: “Both the capped federal allotment (known as the Section 1108 allotment) and the territories’ federal matching rate (known as the federal medical assistance percentage, or FMAP) are fixed in statute.”²³⁴ In addition to the Medicaid spending cap in Puerto Rico, other federal assistance programs such as the Medicare savings program, low-income subsidies, and Supplemental Security Income are unavailable to Puerto Rico’s residents.²³⁵

Medicaid reimburses states a certain percentage of its Medicaid expenditures based on the “state’s per capita income relative to U.S. per capita income.”²³⁶ This percentage is the FMAP.²³⁷ If Puerto Rico were to benefit just as any state in the nation, it would receive the maximum FMAP allowed: eighty-three percent.²³⁸ Instead, Puerto Rico only obtains “capped federal Medicaid funds and a fixed FMAP (55%) that is substantially lower than the 83% rate based on per capita income that they would receive if they were states.”²³⁹ Due to these discrepancies between its Medicaid need and actual Medicaid assistance, Puerto Rico faced gaps in Medicaid funding of \$877 million in 2018, a number that does not account for the additional funds needed to deal with a public health emergency or natural disaster.²⁴⁰ These gaps force Puerto Rico to use its own funds to continue to provide services or to cut such services when money runs out.²⁴¹ As we discuss in section V.B., PROMESA only allows so much autonomy in the allocation of these funds.

Even when Puerto Rico’s receipt of federal benefits is clearly

233 Lina Stolyar & Robin Rudowitz, *Implications of the Medicaid Fiscal Cliff for the U.S. Territories*, KAISER FAM. FOUND. (Sept. 14, 2021), <https://www.kff.org/medicaid/issue-brief/implications-of-the-medicaid-fiscal-cliff-for-the-u-s-territories/>.

234 *Id.*

235 Rudowitz & Foutz, *supra* note 218.

236 ALISON MITCHELL, CONG. RSCH. SERV., R43847, MEDICAID’S FEDERAL MEDICAL ASSISTANCE PERCENTAGE (FMAP) 2 (2020), <https://crsreports.congress.gov/product/pdf/R/R43847/11>.

237 *Id.* at 1.

238 Seervai, *supra* note 226.

239 Rudowitz et al., *supra* note 232.

240 Seervai, *supra* note 226; Cristina del Mar Quiles, *Guía para Entender la Burocracia de “La Recuperación,”* LOS CHAVOS DE MARÍA (Sept. 23, 2019), <https://periodismoinvestigativo.com/2019/09/guia-para-entender-la-burocracia-de-la-recuperacion/>.

241 Judith Solomon, *Puerto Rico’s Medicaid Program Needs an Ongoing Commitment of Federal Funds*, CTR. ON BUDGET & POL’Y PRIORITIES (Apr. 22, 2019), <https://www.cbpp.org/research/health/puerto-ricos-medicaid-program-needs-an-ongoing-commitment-of-federal-funds>.

inequitable when compared to other states, the island is compelled to spend as much in taxes as other states in the union.²⁴² In fact, scholars have noted:

Federal health care policies treat Puerto Rico as if it were a U.S. state when collecting taxes, yet still not when applying federal poverty standards and reimbursement rates or setting tax free zones for U.S. corporate investors residing on the island. Federal policies are significantly, and conveniently, blinded to social and economic differences between the island and the mainland, leading to greater disparities.²⁴³

Limitations in federal funding for hospital payments, services, and Medicare and Medicaid further the strains of a system close to collapse.²⁴⁴ This lack of funding explains why certain countries are better equipped to handle unexpected public health crises, such as the COVID-19 pandemic. With the Medicaid spending cap in federal funding, a territory like Puerto Rico has to place limits on services usually covered by Medicaid to better adjust to available resources and funding.²⁴⁵ As an additional consequence, when funds are exhausted, people lose health insurance and/or services are terminated once funding expires.²⁴⁶

Especially when examining the conditions of Puerto Rico in comparison to Hawai'i and Massachusetts, we see how the self-determination of the two states grants them the autonomy to develop more effective infrastructures and generate more efficient governance mechanisms. Accordingly, the economic relief that comes with statehood puts Massachusetts and Hawai'i in a better position to leverage just and fair support from the federal government. This leverage grants states the power to advocate with the federal government for necessary resources to handle public health crises—leverage that Puerto Rico, as a territory, does not have.

2. State Plans for Healthcare Improvement

Discrepancies in Puerto Rico's access to health care funds as compared to Hawai'i and Massachusetts is maybe most salient in the differences between the plans for their healthcare sectors. A closer look into

242 See Ximena Benavides, *Disparate Health Care in Puerto Rico: A Battle Beyond Statehood*, 23 U. PA. J.L. & SOC. CHANGE 163, 174 (2020).

243 *Id.*

244 Lizette Alvarez & Abby Goodnough, *Puerto Ricans Brace for Crisis in Health Care*, N.Y. TIMES (Aug. 2, 2015), <https://www.nytimes.com/2015/08/03/us/health-providers-brace-for-more-cuts-to-medicare-in-puerto-rico.html>.

245 Solomon, *supra* note 241.

246 *See id.*

the states' respective Departments of Health's strategic plans, gives further insight into the health resources and services available to their citizens.

The plans for Hawai'i and Massachusetts include provisions for preventive services, public health interventions, access to care, and the maintenance of, and access to, data.²⁴⁷ In contrast, Puerto Rico's plan focuses primarily on the development of its health agency and departments in areas such as assessing departmental works, establishing health care processes, and updating technology.²⁴⁸ The archipelago's plan is primarily focused on transforming its healthcare system, a process that has been in place for many years but has been delayed and fractured by the economic crisis, natural disasters, and public health emergencies.²⁴⁹

While Hawai'i and Massachusetts pursue plans that promote health and reduce disparities, Puerto Rico's plan aspires to form an equitable system.²⁵⁰ While other strategic plans have actual programs, initiatives, or strategies to guarantee more equitable access to services, ultimately resulting in promoting health and lowering disparities, Puerto Rico still primarily, if not only, talks about trying to understand how to achieve equitable access to healthcare and empower communities.²⁵¹ The plan contains largely aspirations but no real road maps; however, other strategic plans are actual road maps of what is being done or what wants to be achieved through identified vehicles.²⁵² Puerto Rico's plans are neither up-stream interventions that would create desired population health outcomes, nor infrastructure improvements that will be able to handle its residents demands.²⁵³

247 See David Y. Ige & Virginia Pressler, *Strategic Plan: 2015-2018*, HAW. DEP'T HEALTH 7 (Aug. 10, 2016), <https://health.hawaii.gov/oppd/files/2013/04/Hawaii-Department-of-Health-Strategic-Plan-2015-2018-081616.pdf>; *Massachusetts State Health Improvement Plan (SHIP)*, MASS. DEP'T PUB. HEALTH 5-6 (Oct. 31, 2014), <https://www.mass.gov/doc/state-health-improvement-plan/download>.

248 See, e.g., Lorenzo González Feliciano, *Plan Estratégico 2011-2018*, DEPARTAMENTO DE SALUD 20, <https://ogp.pr.gov/SobreOGP/AreaTrabajo/GerenciaPublica/PlanesEstrategicos/Departamento%20de%20Salud/Plan%20Estrat%20C3%A9gico-DS2011-2018%20Salud.pdf> (discussing Puerto Rico's desire to sustain its own office for public health emergencies).

249 *Id.* at 49.

250 *Id.* at 4.

251 See, e.g., *id.* at 73-84 (discussing plans for the Department of the Promotion of Health).

252 *Massachusetts State Health Improvement Plan (SHIP)*, *supra* note 247, at 4, 11. Compare *id.*, with Ige & Pressler, *supra* note 247, at 7.

253 See David R. Williams et al., *Moving Upstream: How Interventions that Address the Social Determinants of Health Can Improve Health and Reduce Disparities*, 14 J. PUB. HEALTH MGMT. & PRAC. S8, S8 (2008) (discussing how factors such as "housing, neighborhood conditions, and increased socioeconomic status . . . can lead to improvements in health," factors notably absent from Puerto Rico's plan).

These limitations in Puerto Rico's plans are not because of government unwillingness to address these needs, but because of a lack of decision-making power due to its limited governance. The power to decide and implement a better system, even if costly, is not in the hands of the government or citizens, but rather in the hands of the dominant power, the U.S. Congress.²⁵⁴ Through its establishment of the fiscal control board through PROMESA, Congress set the priority of the island as repayment of its current debt.²⁵⁵ Even when the new mandate from Congress says that its goal is to maintain and help improve the island's infrastructure, the reality is that money only goes so far.²⁵⁶

3. Care Process and Infrastructure

Collection and availability of data is essential to understanding a population's needs and informing policymaking.²⁵⁷ In a national system like Medicaid that relies on data to provide reimbursement to states, proper data is necessary to ensure states receive proper reimbursement.²⁵⁸ When that data does not exist, it is impossible to do this.

The federal Agency for Healthcare Research and Quality (AHRQ) collects data from states to identify costs, quality of health services, patterns, access to services, and health outcomes, among other things, to inform policy development.²⁵⁹ Puerto Rico does not seem to consistently participate in this type of data collection, as they are rarely present among states and jurisdictions that provide data among the current available data sets that AHRQ have available. Puerto Rico is often criticized for its lack of verifiable data collection, and many healthcare quality measures may only be found through the Puerto Rico Health Department or the Puerto Rico Institute of Statistics.²⁶⁰ These measures, if they exist, lack the same level of detail that

254 See Cabán, *supra* note 22.

255 *Id.*

256 Hiram J. López Rodríguez, *El Título v De P.R.O.M.E.S.A. y su Impacto en la Agenda de Reconstrucción de Puerto Rico*, 87 REV. JUR. U. P.R. 885, 886 (2018).

257 See Ross, C. Brownson et al., *Understanding Evidence-Based Public Health Policy*, 99 AM. J. PUB. HEALTH 1576, 1576–81 (2009).

258 See Jennifer Reck & Rachel Yalowich, *Understanding Medicaid Claims and Encounter Data and Their Use in Payment Reform*, NAT'L ACAD. FOR ST. HEALTH POL'Y 2 (Mar. 2016), <https://www.nashp.org/wp-content/uploads/2016/03/Claims-Brief.pdf>.

259 See *Agency for Healthcare Research and Quality: A Profile*, AGENCY FOR HEALTHCARE RSCH. & QUALITY, <https://www.ahrq.gov/cpi/about/profile/index.html> (Feb. 2022).

260 See *Puerto Rico*, AM.'S EMERGENCY CARE ENV'T, <http://www.emreportcard.org/Puerto-Rico/> (last visited Apr. 10, 2022); Lizzie Wade, *Critics Blast Move to Dismember Puerto Rico's Statistical Agency*, SCIENCE (Feb. 6, 2018), <https://www.science.org/content/article/critics-blast-move-dismember-puerto-rico-s-statistical-agency; Datos del>

is collected by the AHRQ, or other data collection agencies, for other states. For example, Massachusetts's and Hawai'i's benchmarks are compared against a national standard through the AHRQ data, so one can see the details of each benchmark score and how close each state is to the desirable benchmark.²⁶¹ Puerto Rico's data, which is not necessarily available, nor the same as those in AHRQ, cannot reliably be compared to national data. As a matter of fact, Puerto Rico has, in the past, tried to dismantle independent agencies that collect and publish data for the island, such as the Institute of Statistics.²⁶² This lack of data is not only concerning from a data analysis standpoint, but has real consequences for Puerto Rico's health care. The lack of data prevents Puerto Rico from fully understanding its problems and forming adequate solutions, thus reducing quality of healthcare services to all U.S. citizens residing in the archipelago.²⁶³

Despite the general deficiencies in Puerto Rico's data, enough data exists in some areas to provide comparisons to the U.S. states. In examining the available quality metrics data on hospitals, Puerto Rico's hospital infrastructure pales in comparison to any other state.²⁶⁴ In fact, “[c]ompared to the rest of the United States, Puerto Rico’ [sic] hospitals, when grouped

Departamento de Salud, DEPARTAMENTO DE SALUD, <https://ckan.salud.gov.pr/> (last visited Apr. 10, 2022); *ESTADÍSTICAS.PR*, <https://estadisticas.pr/> (last visited Apr. 10, 2022).

261 See *National Healthcare Quality and Disparities Reports: Massachusetts*, AGENCY FOR HEALTHCARE RSCH. & QUALITY (AHRQ), <https://nhqrnet.ahrq.gov/inhqrdr/reports/qdr> (last visited Apr. 10, 2022); *National Healthcare Quality and Disparities Reports: Hawaii*, AGENCY FOR HEALTHCARE RSCH. & QUALITY (AHRQ), <https://nhqrnet.ahrq.gov/inhqrdr/reports/qdr> (last visited Apr. 10, 2022).

262 As mentioned before, one of the major challenges in trying to compare Puerto Rico data to any of the other states is finding official data in order to conduct sound analysis. Even when data is found, it does not show the same level of detail or the necessary information to compare sub-groups feeding that data. Furthermore, agencies that were tasked with collecting data from the Puerto Rican government in a centralized manner and provide this data to the public as well as reports to inform decision making have been re-structured, making them nonexistent. See Giorgia Guglielmi, *Plan to Dismantle Puerto Rico's Statistics Agency Gets Green Light*, NATURE (Apr. 5, 2018), <https://www.nature.com/articles/d41586-018-04120-5>; *Puerto Rico*, AM.'S EMERGENCY CARE ENV'T, <http://www.emreportcard.org/Puerto-Rico/> (last visited Apr. 10, 2022) (“Puerto Rico also faces additional challenges unique to the island, such as a lack of many data collection mechanisms that allow most states in the nation to efficiently and effectively review and address areas needing significant improvement.”).

263 See Maria Levis, *The Price of Inequality for Puerto Rico*, HEALTH AFFS. (Dec. 29, 2015), <https://www.healthaffairs.org/doi/10.1377/forefront.20151229.052430> (discussing Puerto Rico's lack of data as harming the country's ability to provide effective solutions to healthcare crises).

264 Arturo Balaguer et al., *The Disparity in Hospital Quality Metrics Between Puerto Rico and the US*, V2A CONSULTING (Dec. 2, 2019), <https://v2aconulting.com/the-disparity-in-hospital-quality-metrics-between-puerto-rico-and-the-us/?lang=es>.

together, rank last in most quality measures.²⁶⁵ From readmission to the hospital within thirty days of discharge to mortality rates in thirty days after entering a hospital, Puerto Rico's rates are above national averages.²⁶⁶ Even more revealing are the emergency department statistics, which show a tremendous difference in the waiting times in an emergency room before a patient is admitted to inpatient.²⁶⁷ On average, stateside patients wait four hours and eighteen minutes, while Puerto Rico's patients wait nearly fourteen hours and thirty minutes, more than three times the national average.²⁶⁸ According to data from the Centers for Medicaid and Medicare services, for time that patients spend in the emergency department before leaving from the visit, Hawai'i and Massachusetts average one hour and fifty-seven minutes and three hours and nine minutes, respectively, while Puerto Rico's wait time is significantly longer at an average of three hours and fifty-four minutes.²⁶⁹ Even in this dataset, however, Puerto Rico's lack of available data is clear, as many statistics otherwise available for many states are missing for Puerto Rico, including the average time spent in the emergency department before a patient is sent home.²⁷⁰

As if quality measures were not enough, when it comes to quantity, Puerto Rico lacks sufficient hospitals, specialized hospitals, and hospital beds to adequately serve its residents.²⁷¹ To make matters worse, the geographic distribution of hospitals is less than optimal for much of the population, particularly those in less-populated or rural communities, since these institutions are not equitably located throughout the archipelago.²⁷² For example, the city of Vieques has not had a hospital since Hurricane Maria, likely resulting in many preventable deaths.²⁷³ Additionally, more than half of the hospitals in Puerto Rico are for profit, whereas only about one quarter of hospitals in the U.S. which are for-profit institutions.²⁷⁴ The distinction

265 *Id.*

266 *Id.*

267 *Id.*

268 *Id.*

269 *Timely and Effective Care - State*, CTMS. FOR MEDICARE & MEDICAID SERVS. (Jan. 26, 2022), <https://data.cms.gov/provider-data/dataset/apyc-v239> (using the measure “[a]verage (median) time patients spent in the emergency department before leaving from the visit[.] [a] lower number of minutes is better” for these statistics).

270 *See id.*

271 OFF. OF THE ASSISTANT SEC'Y FOR PLAN. & EVALUATION, *supra* note 211, at 2.

272 *See id.* at 5. Furthermore, according to ASPE, by 2015, Puerto Rico had 2.68 hospital beds per 1,000 persons versus 2.90 beds per 1000 persons in the mainland United States. *Id.* In addition, “Puerto Rico had only 70.1 intensive care unit beds per 1 million people, compared with 290.6 beds per 1 million in the mainland U.S.” *Id.* at 8.

273 RENTA ET AL., *supra* note 200, at 55.

274 OFF. OF THE ASSISTANT SEC'Y FOR PLAN. & EVALUATION, *supra* note 211, at 5.

between for-profit and non-profit institutions comes into play when funding is an issue. In Puerto Rico specifically, the for-profit hospitals are owned by four groups, which also own some of the biggest health insurers in the island.²⁷⁵ Rather than expanding services to gain revenue, they have opted to cut expenses, laying off employees and cutting costs.²⁷⁶ These statistics demonstrate the limited care infrastructure available in the archipelago to effectively meet the needs of its population, and its difficulty in quickly responding to a natural disaster or health crisis.²⁷⁷

The natural events in the Caribbean have caused Puerto Rico's infrastructure to deteriorate even further. Puerto Rico suffered strong hurricanes in past years that have extensively damaged existing infrastructure in the commonwealth.²⁷⁸ Puerto Rico's healthcare is at a continuous risk of deterioration.²⁷⁹ Unlike Hawai'i and Massachusetts, Puerto Rico is in a worse position due to the financial crisis which resulted, in part, from the lack of federal funds and the archipelago's susceptibility to natural disasters.²⁸⁰ This risk is interwoven with its lack of governance and self-determination. Puerto Rico's lack of these political powers condemns the archipelago to depend on the federal government's mercy to provide efficient services for its population, forcing it to jump through extra hoops just to obtain less resources in the end.²⁸¹ For instance, the Jones Act is an example of the extra hoops Puerto Rico has to navigate to get any goods in the archipelago.²⁸² Under this Act, any international imports have to be offloaded in mainland U.S. to be reloaded in a U.S. vessel to be shipped to the island.²⁸³ When Hurricane María devastated Puerto Rico, the territory's lack of self-determination also became an obstacle to international effort to provide recovery aid. The

275 Alexander C. Kaufman, *As Coronavirus Bears Down, A Private Equity Deal Haunts a Top Puerto Rican Hospital*, HUFFPOST (June 16, 2020) (updated June 17, 2020), https://www.huffpost.com/entry/coronavirus-puerto-rico-hospital_n_5ee0f4c1c5b6147d60259e84.

276 *Id.*

277 *Puerto Rico*, *supra* note 260.

278 Rudowitz & Foutz, *supra* note 218.

279 Jesse Roman, *The Puerto Rico Healthcare Crisis*, 12 ANNALS AM. THORACIC SOC'Y 1760, 1760–62 (2015).

280 *Id.* at 1760, 1762.

281 *See* Cabán, *supra* note 22.

282 *See* Merchant Marine Act of 1920, Pub. L. No. 66-261, 41 Stat. 998 (1920) (codified as amended in scattered sections of 46 U.S.C.).

283 Matthew Yglesias, *The Jones Act, the Obscure 1920 Shipping Regulation Strangling Puerto Rico, Explained*, VOX, <https://www.vox.com/policy-and-politics/2017/9/27/16373484/jones-act-puerto-rico> (Oct. 9, 2017); Colin Grabow et al., *The Jones Act: A Burden America Can No Longer Bear*, CATO INST. (June 28, 2018), <https://www.cato.org/publications/policy-analysis/jones-act-burden-america-can-no-longer-bear>.

clearest example of this was Puerto Rico's inability to accept Venezuelan oil as the archipelago suffered from gas shortages, because Puerto Rico is not authorized to offload any import cargo from an international vessel and because of the political tensions between the U.S. and Venezuela.²⁸⁴ Unless the structural consequences of Puerto Rico's colonization are addressed, its current status will continue to hinder improvements to the island's healthcare systems.²⁸⁵

VI. COVID-19 AND PUERTO RICO'S RESPONSE IN COMPARISON TO HAWAII AND MASSACHUSETTS

In looking more concretely at how these structural disadvantages affect Puerto Rico's population, the novel COVID-19 pandemic provides a helpful comparison. When comparing Puerto Rico's response to the pandemic to Massachusetts and Hawai'i, Puerto Rico's lack of resources as a direct result of its governing colonial status has left the archipelago, yet again, in the dark. As presented above, the lack of proper healthcare infrastructure to treat and service those who need access to health care is a major detriment to anyone response to a public health emergency.

A. *States' Positions to Manage the COVID-19 Emergency*

The status of the pandemic on the archipelago, though alarming, may not capture the full extent of this public health emergency. Indeed, Puerto Rico has exhibited difficulties in reporting cases and related deaths in a methodologically sound manner, information that is needed to properly inform public health policies and enable officials to better tackle the emergency.²⁸⁶ Specifically, there are reporting inconsistencies and changes in the methodology used to collect data on cases in the archipelago,

284 See Raquel Reichard, *How Puerto Rico's Colonial Status Impairs Hurricane Relief*, REMEZCLA (Sept. 28, 2017), <https://remezcla.com/features/culture/puerto-rico-colonial-status-impairs-hurricane-relief/>; Wilma E. Reverón-Collazo, *The International Response to the Hurricane and Puerto Rico's Role in the Global Environment*, RUTGERS (Oct. 15, 2018), https://clc.camden.rutgers.edu/files/WERC_Rutgers.pdf.

285 See Wiscovitch, *supra* note 24; Enrique Vázquez Quintana, *El Coronavirus y la Influenza Ponon de Manifiesto el Desconocimiento del Gobierno en Salud Pública: COVID-19 y la Ideología Política del País*, MEDICINA SALUD PÚBLICA (Mar. 12, 2020), <https://medicinaysaludpublica.com/noticias/covid-19/el-coronavirus-y-la-influenza-ponon-de-manifiesto-el-desconocimiento-del-gobierno-en-salud-publica/5920>.

286 *Tracking Coronavirus in Puerto Rico: Latest Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2021/us/puerto-rico-covid-cases.html> (Apr. 24, 2022); Alejandro Azofeifa et al., *Estimating and Characterizing COVID-19 Deaths, Puerto Rico, March-July 2020*, 136 PUB. HEALTH REPS. 354, 355 (2021).

including counting older tests, revising the number of cases down, changing characteristics to count COVID-19 related deaths, and double-counting patients.²⁸⁷ Moreover, there is significant uncertainty about coronavirus cases in Puerto Rico due to the lack of testing options and inadequate COVID-19 tracing.²⁸⁸ On an archipelago already struggling with scarce medical resources or funds, this lack of testing creates even further uncertainty around COVID-19.²⁸⁹ Simply put, even using available data, the island faces a dearth of resources available to adequately confront the virus.²⁹⁰ The resources necessary for Puerto Rico to address the pandemic do not align with the resources available to it.

In contrast, Massachusetts has been able to better confront the pandemic because it has a healthcare system with adequate resources.²⁹¹ Hawai'i, though situated in a similar position to Puerto Rico in terms of geographical isolation from the mainland and resource availability, was still able to address the pandemic with more success and accuracy than Puerto Rico.²⁹² Like Hawai'i and Massachusetts, Puerto Rico imposed severe restrictions during the pandemic yet their lack of healthcare resources still failed the island.²⁹³ As discussed, Puerto Rico lacks a health care infrastructure that is able to handle the number of patients it encounters.²⁹⁴ As individual cases demonstrate, it can take several emergency room visits to different hospitals to receive adequate testing and care needed to prevent COVID-19 related deaths.²⁹⁵ In the end, it comes down not to individual

287 *Tracking Coronavirus in Puerto Rico: Latest Map and Case Count*, *supra* note 286; Azofeifa et al., *supra* note 286, at 355.

288 Sofia Perez Semanaz, *The Impact of the Covid-19 Pandemic in Puerto Rico*, AM. U. WASH. D.C. (Nov. 1, 2020), <https://www.american.edu/cas/news/catalyst/covid-19-in-puerto-rico.cfm>.

289 *Id.*

290 *Id.*

291 Adam Reilly, *What Massachusetts Got Right in Its Pandemic Response*, GBH NEWS (May 25, 2020), <https://www.wgbh.org/news/local-news/2020/05/25/what-massachusetts-got-right-in-its-pandemic-response>.

292 Alejandro de la Garza, *Hawaii Is Riding Out the COVID-19 Storm. But Geographic Isolation Isn't the Blessing It May Seem*, TIME (Nov. 25, 2020), <https://time.com/5915084/hawai-i-covid-coronavirus/>.

293 See Nicole Acevedo, *Puerto Rico Enacted Strict Covid Measures. It Paid Off, and It's a Lesson for the Mainland.*, NBC NEWS (Mar. 15, 2021, 6:05 AM) (updated 8:09 AM), <https://www.nbcnews.com/news/latino/puerto-rico-enacted-strict-covid-measures-it-paid-it-s-n1260998>.

294 Omayra Sosa Pascual & Jeniffer Wiscovitch Padilla, *Puerto Rico's Chronically Ill Health System Blocks Effective COVID-19 Response*, CENTRO DE PERIODISMO INVESTIGATIVO (July 24, 2020), <https://periodismoinvestigativo.com/2020/07/puerto-ricos-chronically-ill-health-system-blocks-effective-covid-19-response/>.

295 *Id.*

state's measures that prove to have been more effective than the other, or vaccination plans, or even the roll-out of vaccines or restrictions imposed, but on how many resources there are available and how they are being used to deal with the emergency.

Puerto Rico, in comparison to Massachusetts and Hawai'i, is not able to adequately respond to an emergency. In our study, we analyzed data that compared vaccine rollout and critical staffing shortages. In creating this study, we intended to also examine Intensive Care Unit (ICU) bed utilization within each state, however, this was not possible due to Puerto Rico's data limitations. While both Hawai'i and Massachusetts had this data, there was none available for Puerto Rico.²⁹⁶ The comparisons of vaccine utilization and critical staffing shortages illustrate how discriminatory access to resources and the lack of self-determination and governance play a pivotal part in how states, even one similarly situated to Puerto Rico, hold a clear advantage over colonial territories in providing efficient solutions to a health crisis like COVID-19.

1. Vaccine Utilization

In facing the COVID-19 pandemic, vaccines have been one of the primary tools in slowing the spread of the virus and decreasing rates of hospitalization.²⁹⁷ Beginning in December 2020, the U.S. swiftly distributed millions of vaccines in the hopes of curtailing the virus.²⁹⁸ By April 2021, three vaccines were approved for emergency use in prevention of COVID-19: the two-dose Moderna shot, the two-dose Pfizer shot, and the single-dose Johnson & Johnson shot.²⁹⁹ The use of the vaccines by states and territories of the U.S. was not equal, however, and some fared better in the distribution of vaccines to citizens. Massachusetts and Hawai'i both had higher percentages of vaccine utilization than Puerto Rico, as demonstrated

296 See *COVID-19 Estimated ICU Beds Occupied by State Timeseries*, HEALTHDATA.GOV, <https://healthdata.gov/dataset/COVID-19-Estimated-ICU-Beds-Occupied-by-State-Time/7ctx-gtb7> (July 30, 2021).

297 See Alison Galvani et al., *Deaths and Hospitalizations Averted by Rapid U.S. Vaccination Rollout*, COMMONWEALTH FUND (July 7, 2021), <https://www.commonwealthfund.org/publications/issue-briefs/2021/jul/deaths-and-hospitalizations-averted-rapid-us-vaccination-rollout>.

298 *Id.*

299 See *COVID-19 Frequently Asked Questions*, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-frequently-asked-questions> (Apr. 22, 2022) (scroll to "Vaccines, Biologics, Human Tissues, and Blood Products" then click "Q: Which COVID-19 vaccines are FDA-approved or authorized for emergency use?").

by the data below.

Table 2: Vaccine Utilization per State as of April 12, 2021³⁰⁰

	Puerto Rico	Massachusetts	Hawai'i
<i>Total Delivered Vaccines</i>	2,426,730	5,331,330	1,140,130
<i>Total Used Vaccines</i>	1,348,411	4,651,716	853,628
<i>Percentage of Vaccine Utilization</i>	56%	87%	75%

Table 3: Vaccinated Population by State as of April 12, 2021³⁰¹

	Puerto Rico	Massachusetts	Hawai'i
<i>Percentage of Population with First Dose of Vaccine</i>	27%	44%	37%
<i>Percentage of Population Fully Vaccinated*</i>	16%	26%	25%

*"Fully Vaccinated" indicates the individual received either the single-dose Johnson & Johnson vaccine or two doses of either the Moderna or Pfizer vaccine.³⁰²

As of April 12, 2021, Massachusetts and Hawai'i had disbursed most of the doses they received, while Puerto Rico, only distributed a little over half of the vaccines it received. The same is true of the rates of fully vaccinated individuals in comparison to people with one shot per state; again, Puerto Rico, even with a proportional number of vaccines received, continues to fall behind in administering the doses received. There is a myriad of reasons why the vaccination rates in Puerto Rico are so far behind those of Hawai'i and Massachusetts. This difference might be attributable to Puerto Rico's overburdened infrastructure that inhibits it from carrying out vaccination plans, or logistical problems in distributing vaccines to its population.³⁰³ In either case, these causes are the direct effect

300 *COVID-19 Vaccinations in the United States, Jurisdiction*, CTRS. DISEASE CONTROL & PREVENTION, <https://data.cdc.gov/Vaccinations/COVID-19-Vaccinations-in-the-United-States-Jurisdi/unsk-b7fc> (Apr. 24, 2022).

301 *Id.*

302 *Id.*

303 *In Puerto Rico, Reaching People Missed by COVID-19 Vaccination Rollout*, DRs. WITHOUT

of discriminatory access to federal resources, lack of self-determination, and the economic crisis derived also from those issues, as a direct product of colonialism and lack of governance as discussed above.

2. Staffing Shortages

Puerto Rico's economic crisis has contributed not only to resource shortages, but labor shortages as well. This economic disaster has led thousands of professionals, particularly young professionals, to emigrate to the other states in search for a better life, leaving a critical staffing shortage.³⁰⁴ According to U.S. Census data, Puerto Rico is facing an insurmountable exodus of young professionals in various fields.³⁰⁵ The medical field has been hit particularly hard by this emigration, as the archipelago's labor landscape fails to provide financial security to recent medical graduates.³⁰⁶ As of 2018, Puerto Rico lost at least fifteen percent of all its medical personnel, adding to the already existing shortage of medical resources and proper medical facilities.³⁰⁷

The tables below provide a snapshot of the staffing shortages during the first year of the COVID-19 pandemic. Beginning in March 2020, hospitals in each state were asked daily to report if they had a shortage in critical staffing.³⁰⁸ "Critical staffing" denotes the minimum essential staff

BORDERS (Mar. 29, 2021), <https://www.doctorswithoutborders.org/latest/puerto-rico-reaching-people-missed-covid-19-vaccination-rollout>.

304 Syra Ortiz-Blanes, *A New Maria? Puerto Rico's Next Crisis Is a Demographic Crisis*, TAMPA BAY TIMES (May 25, 2021), <https://www.tampabay.com/news/nation-world/2021/05/25/a-new-maria-puerto-ricos-next-crisis-is-a-demographic-crisis/>; Jason Schachter & Angelica Menchaca, *Net Outmigration from Puerto Rico Slows During Pandemic*, U.S. CENSUS BUREAU (Dec. 21, 2021), <https://www.census.gov/library/stories/2021/12/net-outmigration-from-puerto-rico-slows-during-pandemic.html>.

305 Oren Dorell, *Who Will Rebuild Puerto Rico as Young Professionals Leave Island After Hurricane Maria?*, USA TODAY (Oct. 12, 2017) (updated Oct. 13, 2017), <https://www.usatoday.com/story/news/nation/2017/10/12/puerto-rico-young-professionals-leaving-hurricane-maria/754753001/>; Catherine Kim, *A 13-Year-Old's Death Highlights Puerto Rico's Post-Maria Health Care Crisis*, VOX (Feb. 27, 2020), <https://www.vox.com/identities/2020/2/27/21150176/puerto-rico-health-care-hospital-access-hurricane-maria>.

306 Kim, *supra* note 305.

307 *Id.*

308 See *COVID-19 Reported Patient Impact and Hospital Capacity by State Timeseries*, HEALTHDATA.GOV, <https://healthdata.gov/Hospital/COVID-19-Reported-Patient-Impact-and-Hospital-Capa/g62h-syeh> (Mar. 28, 2022) (this dataset was last downloaded and checked on March 28, 2022). Each data category as well as the dataset for each measure can be found at the Patient Impact and Hospital Capacity database.

based on “facility needs and internal policies for staffing ratios.”³⁰⁹ The data below shows the average number of hospitals reporting noncritical staffing shortages, reporting a critical staffing shortage, and not reporting data for the period from March 1, 2020, to April 10, 2021.³¹⁰

Table 4: Critical Staffing Shortages from March 1, 2020, to April 10, 2021³¹¹

	Puerto Rico	Massachusetts	Hawai'i
<i>Total number of Days During 03/01/2020 to 04/10/2021 in which States Reported This Data</i>	406	380	406
<i>Average Number of Hospitals Reporting no Critical Staffing Shortage</i>	16.1	58.4	12.9
<i>Average Number of Hospitals Reporting a Critical Staffing Shortage</i>	3.1	5.3	1.1
<i>Average Number of Hospitals Not Reporting This Data</i>	34.4	22.8	12.3

A striking disparity emerges in looking at the “not reporting” averages among the states. It is daunting that in comparison to Massachusetts and Hawai'i, Puerto Rico, on average, did not report this data on an aggregated average of almost thirty-five of the times, meaning that from PR less hospitals would report on a daily basis these indicators in comparison to other hospitals in each other state. This could be an indicator of the overburdened system and infrastructure, that even essential data is either not

309 See U.S. DEP'T OF HEALTH & HUM. SERVS., COVID-19 GUIDANCE FOR HOSPITAL REPORTING AND FAQs FOR HOSPITALS, HOSPITAL LABORATORY, AND ACUTE CARE FACILITY DATA REPORTING 14 (2022), <https://www.hhs.gov/sites/default/files/covid-19-faqs-hospitals-hospital-laboratory-acute-care-facility-data-reporting.pdf>.

310 COVID-19 Reported Patient Impact and Hospital Capacity by State Timeseries, *supra* note 308.

311 *Id.*

being collected, and if collected, is not being timely reported, if reported at all. An additional potential problem, as discussed above, is the inconsistency in data from Puerto Rico which can be found through several entities.

B. *Comparing Healthcare Systems in Light of Governance and Self-Determination*

As seen from comparing the three healthcare systems, there emerges important differences from effective governance and self-determination in the development of fair and healthy public structures.³¹² Indeed, comparing Puerto Rico with Hawai'i demonstrates the difference in treatment that resulted from one turning from an overseas territory to a state and the other remaining a territory.³¹³ Additionally, in looking at the rights afforded to Massachusetts versus those afforded to Puerto Rico, the misuse of the term "commonwealth" becomes clear.³¹⁴

Assessing the parallel processes that both Hawai'i and Puerto Rico underwent in the twentieth century after being acquired by the U.S., we can see the signs of a preference for Hawai'i to become a state from early on. Becoming a state allowed Hawai'i access to representation in Congress, participation in federal elections, and access to public funds for all federal public spheres including education, health, and infrastructure. Although Hawai'i still suffers from discriminatory treatment related to its overseas location through double taxation that makes island life exponentially more expensive thanks to the Jones Act, they still have a preferential status as a state that may mitigate the poverty exacerbated by the expenses of imports and exports.³¹⁵ There are racial and ethnic factors in Hawai'i that promote

312 See Lawrence Gostin, *The Formulation of Health Policy by the Three Branches of Government*, in *SOCIETY'S CHOICES: SOCIAL AND ETHICAL DECISION MAKING IN BIOMEDICINE* 335 (Ruth Ellen Bulger et al. eds., 1995).

313 See David Stebenne, *Statehood for Puerto Rico? Lessons from the Last Time the U.S. Added a Star to Its Flag*, CONVERSATION (June 9, 2017) (updated June 13, 2017), <https://theconversation.com/statehood-for-puerto-rico-lessons-from-the-last-time-the-us-added-a-star-to-its-flag-79150>; David Stebenne, *The Political Dealmaking that Finally Brought Hawaii Statehood*, SMITHSONIAN MAG. (June 15, 2017), <https://www.smithsonianmag.com/history/what-puerto-rico-learn-hawaii-180963690/>.

314 Commonwealth is a term that has been used to refer to Puerto Rico since the enactment of its Constitution, yet the term does not carry any real power. *The Meaning of "Commonwealth,"* PR. REP., <https://www.puertoricoreport.com/the-meaning-of-commonwealth/#.YL7e9zZKhPN> (last visited Apr. 12, 2022).

315 See Chris Isidore, *The Jones Act Has Been Hurting Puerto Rico for Decades*, CNN (Sept. 28, 2017), <https://money.cnn.com/2017/09/28/news/economy/jones-act-puerto-rico/index.html>; Sophia Perez, *The Act that Ate Reasonably Priced Ocean Shipping*, NAT'L TAXPAYERS UNION FOUND. (July 12, 2021), <https://www.ntu.org/foundation/detail/the-act-that-ate-reasonably-priced-ocean-shipping>.

inequity that puts native Hawai'ians at a great disadvantage regardless of its status as a state.³¹⁶ But unlike Hawai'i, Puerto Rico has capped access to federal funds, added bureaucratic loopholes created to sustain its non-state status—on top of the Jones Act restrictions—and lacked federal government representation, which generates a unique and catastrophic public infrastructure that is essentially destined to fail.

The recent response to the COVID-19 pandemic has served to illustrate the effects of poor governance and the absence of self-determination. Local government did mismanage resources and funds, but the bureaucratic structure in place from PROMESA allows the federal government to distance itself from the responsibility of monitoring how the funds are distributed.³¹⁷ At the same time, Puerto Rico's inability to access resources hinders the local government's ability to take care of its people.

In comparing the application of the term commonwealth from Massachusetts to Puerto Rico, we see that in the case of Massachusetts, it confers self-determining power to the state. Because it is a true commonwealth, Massachusetts enjoys great autonomy within the confines of the union, most importantly of which is the power to organize its local infrastructure as it sees fit. Its status as a true commonwealth also determines its relationship with the federal government in terms of the power dynamics at play when the commonwealth requires federal aid.

When we look at Puerto Rico under the same scrutiny, it becomes clear that Puerto Rico is a commonwealth in name only. When a government attempts to manage a healthcare system under these very peculiar circumstances, it highlights the importance of self-determination. A non-country or non-state is unable to develop an efficient healthcare infrastructure without access to resources, accountability, administration, and imposed guidelines. Developing that infrastructure becomes even more difficult when other systemic obstacles surrounding its development are considered. Even alternative forms of grassroots governance—such as those pursued by non-profit community organizations in the archipelago—do not enjoy the same access to resources as states, which hinders any efforts to

316 See Imani Altemus-Williams & Marie Eriel Hobro, *Hawai'i Is Not the Multicultural Paradise Some Say It Is*, NAT'L GEOGRAPHIC (May 17, 2021), <https://www.nationalgeographic.com/culture/article/hawaii-not-multicultural-paradise-some-say-it-is>.

317 See Michael Corkery & Mary Williams Walsh, *Puerto Rico Debt Crisis Splits Congress on Party Lines and Draws Muted Response from White House*, N.Y. TIMES (June 29, 2015), <https://www.nytimes.com/2015/06/30/business/dealbook/puerto-ricos-bonds-drop-on-governors-warning-about-debt.html>; Nicole Acevedo, *How Close Is Puerto Rico to Ending Its Bankruptcy? Here Are 3 Things to Know*, NBC NEWS (Jan. 19, 2022) (updated Jan. 21, 2022), <https://www.nbcnews.com/news/latino/close-puerto-rico-ending-bankruptcy-are-3-things-know-rcna12657>; RENTA ET AL., *supra* note 200, at iii, 19, 21.

decentralize resources and the distribution of them in the pursuit of more efficient processes to serve the people.

Puerto Rico's current healthcare finances and infrastructure are the result of its colonial history and development. Trying to solve these complex issues to advance Puerto Rico to a standard that meets national mainland averages will require more than just better allocation of funds or development of further congressional bills. Solving these issues will require granting Puerto Rico and its residents self-determination and governance to decide its destiny. To better understand limitations and deficiencies in Puerto Rico's healthcare system, its colonial status must be addressed. Decolonizing theories in conjunction with public health theories need to be applied to better inform research efforts. Analyzing Puerto Rico's healthcare system without its political and historical context, and its resulting legal limitations, will inevitably result in an incomplete analysis. It is a disservice to develop remedies and interventions to alleviate deficiencies, promote better responses to public health emergencies, and improve the healthcare system to achieve better population health outcomes, without examining the limitations that its governing colonial status imposes in the archipelago.

C. *Critical Areas to Improve Government Structures in Puerto Rico*

From this analysis, some core issues emerge that need to be addressed, redefined, or transformed to allow Puerto Rico to better administer its resources and provide the best possible public health outcomes for its population. Among these issues is the need for health policies and laws that consider immediate needs and the historical contexts from which those needs have arisen. Without such consideration, health policies will not be equipped to address the underlying factors contributing to poor population health outcomes. Laws which hinder Puerto Rico's self-determination and governance must also be addressed, including PROMESA, which established the Fiscal Control Board that fails to prioritize public health distribution of services over repayment of existing debt responsibilities.³¹⁸ The Board's interventions to ensure repayment of debts is incompatible with its mandate to preserve, protect, and improve Puerto Rico's infrastructure.³¹⁹ The presence of this imposed governing body added bureaucratic steps and requirements to control the distribution of resources to Puerto Ricans, hindering their wellness outcomes.

318 Rosanna Torres, *PROMESA, Cuatro Años Más Tarde*, CENTRO PARA NUEVO ECONOMÍA (Sept. 30, 2020), <https://grupocne.org/2020/09/30/promesa-cuatro-anos-mas-tarde/>.

319 *See id.*

Further, as long as Puerto Rico remains a colony and imperial territory of the U.S., Congress should take steps to end the discriminatory treatment of the archipelago when it comes to access to resources. As a U.S. dependent, Puerto Rico should be granted federal resources such as Medicaid and Medicare on par with the rest of the states of the union. Finally, we cannot make recommendations about improving Puerto Rico's government and governance structure without addressing its colonial status as a structural issue. Puerto Rico must be granted the best chance to design and implement efficient and autonomous governance structures to attend to its population's public health needs. The political relationship with the U.S. should be changed to either hold the U.S. responsible for the outcomes of Puerto Rico by solidifying a permanent union, such as statehood, or releasing Puerto Rico from the colonial rule of the U.S. to allow it to be solely responsible for its own development in a sovereign manner.

CONCLUSION

There are various critical areas to improve when it comes to the administration of resources in Puerto Rico if it is to thrive and develop a better healthcare system. However, it starts with reshaping its relationship with the U.S. federal government in a way that provides Puerto Ricans equal access to the same resources that states use to develop their healthcare systems. The government structures currently in place have proven insufficient to adequately serve the population of the island in all aspects of public health services. Puerto Rico remains unable to bargain with the federal government for the same rights and protections that states enjoy. It has not been afforded the capacity to decide how to relate to other nations, how to self-organize, or even how to even distribute resources and develop accountability for it. At the center of the absence of these abilities is Puerto Rico's colonial status—a status that has such a degrading effect in the island's public health infrastructures. This unequal and discriminatory status stemming from Puerto Rico's colonial history sits at the heart of the negative effects infringed upon the wellbeing of Puerto Rico's inhabitants.

