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WHY IS THERE NO SOCIAL CITIZENSHIP IN PUERTO RICO? 
THE DEMISE OF SECTION 20

Haley Powell*

The people of the United States and the people of Puerto Rico are entering into a new relationship that will serve as an inspiration to all who love freedom and hate tyranny. We are giving new substance to man’s hope for a world with liberty and equality under law. Those who truly love freedom know that the right relationship between a government and its people is one based on mutual consent and esteem.

President Harry Truman

INTRODUCTION

If you enter the Capitol building in San Juan, Puerto Rico, you will find thirty-two sheets of paper spread across four glass display cases. These sheets comprise Puerto Rico’s constitution, which formally established the island’s current Commonwealth status. If you look closely at Article II, the Bill of Rights, Section 20 stands out as a surprising declaration of the right to social welfare:

The Commonwealth also recognizes the existence of the following human rights:

The right of every person to receive free elementary and secondary education.

The right of every person to obtain work.

The right of every person to a standard of living adequate for the health and well-being of himself and of his family, and especially to food, clothing, housing and medical care and necessary social services.

The right of every person to social protection in the event of unemployment, sickness, old age or disability.

The right of motherhood and childhood to special care and assistance.

* J.D., Indiana University Maurer School of Law, 2024. I would like to thank Professor Luis Fuentes-Rohwer for his guidance and feedback on the first drafts of this Note. This Note is dedicated to my grandfathers, Delwood Powell and Dennis Hightower, and to my mentor and friend Bill Swinford.


The rights set forth in this section are closely connected with the progressive development of the economy of the Commonwealth and require, for their full effectiveness, sufficient resources and an agricultural and industrial development not yet attained by the Puerto Rican community.

In the light of their duty to achieve the full liberty of the citizen, the people and the government of Puerto Rico shall do everything in their power to promote the greatest possible expansion of the system of production, to assure the fairest distribution of economic output, and to obtain the maximum understanding between individual initiative and collective cooperation. The executive and judicial branches shall bear in mind this duty and shall construe the laws that tend to fulfill it in the most favorable manner possible.4

But Section 20 is not currently in effect and has never been since its conception in 1952. The United States Congress removed that provision but did not alter the vast majority of the rest of the Constitution of Puerto Rico.5

This Note will analyze the legislative history of Section 20 and the possible motivations for the U.S. Congress’s vote to remove that provision while leaving most others. In particular, I will scrutinize this choice using T.H. Marshall’s theory of social citizenship. I argue that the provision was removed because the United States government did not wish to acknowledge social welfare rights for the inhabitants of an island that is effectively still a colony. Moreover, the lack of social citizenship might be one of the most American aspects of Puerto Rican life.

It is important to note that it would be incorrect to equate social citizenship with Section 20. While the latter might have been indicative of the former, Section 20 certainly could not have guaranteed the attainment of social citizenship. This is because social citizenship requires the widespread fulfillment of basic human needs,6 and because of the financial relationship between Puerto Rico and the United States, Puerto Rico could not have delivered those services on its own. However, that distinction is perhaps the most interesting point of all: why did Congress deny something that was itself symbolic?

Because the island itself has a strategically advantageous placement in the Caribbean, it seems illogical that Congress in 1952 chose to deny even nominal social citizenship for Puerto Ricans. Aspirational social welfare may have dampened domestic political parties’ calls for statehood or independence, which were chiefly rooted in the disparate treatment Puerto Rico received compared to the states. The removal of Section 20 contributed to the wider complaint Puerto Rican politicians

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4 P.R. CONST. art. II, § 20 (West, Westlaw through 2011).
5 One provision regarding public education was altered to allow for private schools more explicitly, and another was added to reflect the fact that the Puerto Rico Constitution could not be amended in a way that conflicted with the U.S. Constitution or the Puerto Rican Federal Relations Act (Public Law 600). See P.R. CONST. art. II, § 5 (amended 1952) (West, Westlaw through 2011); id. art. VII, § 3.
had about the United States diluting meaningful self-government for the island, hidden behind the veneer of allowing Puerto Ricans to craft their own constitution.

Part I will define T.H. Marshall’s theory of citizenship rights and explain how that framework pertains to the denial of social welfare rights in Puerto Rico’s constitution. It will also delineate the larger context of social welfare in the United States using the contract versus charity paradigm posited by two historians, New School Professor Nancy Fraser and New York University Professor Linda Gordon. Part II will explore the legislative history of the Puerto Rican Constitution at the Puerto Rican Constitutional Convention and the U.S. Congress debates following the convention. Part III will examine the ramifications of the removal of Section 20 to the present day and offer policy recommendations to at least begin to remedy the worst of Puerto Rico’s economic ills. The trajectory of Puerto Rico’s economy is inextricably tied to its political status and the broader right to self-determination which prompted Public Law 600. Therefore, Part III will also briefly consider Puerto Rico’s political status and which option might best serve the aims of social welfare and the realization of social citizenship.

I. DEFINING SOCIAL CITIZENSHIP

In 1950, T.H. Marshall, an English sociologist, published the essay “Citizenship and Social Class,” which outlined three basic stages for modern state citizenship.7 The first and most basic is civil citizenship, which in Europe materialized mainly in the eighteenth century, as once-feudal societies morphed into modern states with distinct national identities.8 Civil citizenship guarantees the fundamental aspects of citizenship by conferring the right to personal property, the right to adjudication within a legal system, and personal liberty.9 The second stage is political citizenship, which Marshall identifies as growing in the nineteenth century.10 Political citizenship includes the right to vote and the right to hold elected office.11 To distinguish the second stage from the first, Marshall asserts that “the political rights of citizenship, unlike the civil rights, [are] full of potential danger to the capitalist system.”12

The third and final stage, social citizenship, was burgeoning at the time Marshall was writing. Before the mid-twentieth century, “[s]ocial rights were at a minimum and were not woven into the fabric of citizenship.”13 That is, a state’s responsibilities to its citizens generally did not include much of the social welfare

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8 See id. at 151.
9 Id. at 148.
10 Id. at 149.
11 See id.
12 Id. at 152.
13 Id. at 153.
responsibilities that exist in many liberal democracies today. Marshall saw social citizenship as the crown jewel of modern citizenship—a marker that a society had delivered true economic security to its citizenry through state-provided social welfare, which would lead to “class-abatement.” Specifically, social citizenship’s goal would be the gradual minimization of socioeconomic status as a societal marker by thinning the wealth gap between classes.

However, Marshall’s analysis is certainly influenced by his own British citizenship and focus on English society. As Professors Nancy Fraser and Linda Gordon point out, “When questions about gender and race are put at the center of the inquiry, key elements of Marshall’s analysis become problematic. His periodization of the three stages of citizenship, for example, fits the experience of white workingmen only, a minority of the population.” The case of Puerto Rico is a particularly good example of how the three stages are not always clearly separate: for Puerto Ricans, civil citizenship and political citizenship came at the same time, with the passage of the Jones Act of 1917. Yet even their political citizenship was partial, because the Jones Act did not allow for the domestic election of Puerto Rico’s governor, and to this day, Puerto Ricans do not have a voting representative in Congress and cannot vote in presidential elections. While the three-stage model is not perfect, the framework remains an effective way to conceptualize the growth of citizenship from a bare identifier of national origin to a complex status that, in the modern age, carries a multitude of rights for the individual and responsibilities for the state.

It should be no surprise that Marshall’s theory does not mold exactly to modern citizenship. The world has changed drastically since the publication of Marshall’s essay in 1950. As the continued fallout from World War II created a new world order, halving the world between Soviet and American influences and splintering centuries-old empires, civil and political citizenship became more important than ever before, largely due to the fact that citizenship indicated loyalty to an ideology.

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15 See Marshall, supra note 7, at 153.
18 Puerto Rico has one member in the U.S. House of Representatives called the “resident commissioner,” who can vote within House committees, on procedural matters, and on bills—but they can never be the deciding vote on the floor. See Michael Wines, She’s Puerto Rico’s Only Link to Washington, She Could Be Its Future Governor., N.Y. TIMES (July 26, 2019), https://www.nytimes.com/2019/07/26/us/Jenniffer-Gonzalez-Colon-puerto-rico.html.
19 See Igartúa de la Rosa v. United States, 417 F.3d 145 (1st Cir. 2005).
20 See generally Andrea Friedman, Citizenship in Cold War America: The National Security State and the Possibilities of Dissent (2014) (arguing that holding United States citizenship was viewed as synonymous to believing in capitalist dogma, and that challenging capitalism was antithetical to an American identity).
caused created a need for modern state markers of identity.21 Indeed, eight years after Marshall published his essay, the U.S. Supreme Court decided that stripping a U.S. citizen of their citizenship status constituted cruel and unusual punishment.22

Although Fraser and Gordon criticized the rigidity of the three-stage analysis, they used social citizenship to analyze American citizenship and its intertwined political and economic history.23 Fraser and Gordon argue that social citizenship does not yet exist in the United States because our shared political and cultural identity includes a “hostility to a welfare state,” as social welfare lies outside of our capitalist dichotomy of contract versus charity.24 That is, the growth of American capitalism permanently colored Americans’ view of welfare, casting economic status (and even civil involvement) in the light of contract.25 The slow building of modern American civil citizenship, during which time white working men were centered not only as the ideal citizen but also as heads of households, led to an “erosion of communal responsibility.”26 Before the psychological and cultural advent of the modern nuclear family, “[n]o single relationship defined anyone’s whole entitlement to support; every particular relationship formed a link in a longer chain of dependency.”27 The nuclear family structure thus created unprecedented pressure on a single working person to provide for their spouse and any children.

In the twentieth-century United States, the booming free market economy—which prioritizes profit and is not much concerned with sustainability or the morality of a living wage—set the stage for new depths of poverty in a society without a true social safety net.28 In response, privately organized charity emerged as a complement to contract, and this dichotomy created a system in which “the giver[s] got moral credit while the taker[s] were increasingly stigmatized.”29 Certain welfare programs such as workers’ compensation—which appear to have a clear financial input-output for the receiver—are more palatable, as they mold well to the notion of contract.30 Welfare programs where the link between contribution and payouts is less comparable to a contractual framework (for example, the Supplemental Nutrition Assistance Program) are more likely to be stigmatized as a form of supposedly undeserved charity.31

23 Fraser & Gordon, supra note 16, at 50.
24 Id.
25 See id. at 52.
26 Id. at 56.
27 Id. at 57.
28 Id.
29 Id. at 59.
30 Id. at 60–61.
31 Id. at 61.
What do social citizenship and the contract-charity paradigm have to do with Puerto Rico? First, Puerto Ricans are U.S. citizens and have been since 1917, so it is essential to analyze how their citizenship affected debates around their constitution, and how their citizenship status continues to influence considerations of Puerto Rico’s political status today. Second, the contract-charity framework illuminates the deeply racialized nature of social welfare in the United States, including the territories. Puerto Rico in particular has borne the brunt of poor economic management by the federal government, to the point of outright exploitation. Finally, Marshall’s theory gives us a lens through which to analyze how Puerto Rico’s current political status is unlikely to deliver social citizenship, and thus critical social welfare, for Puerto Ricans. If social citizenship is the full realization of modern citizenship, as Marshall suggests, then Puerto Rico’s current political status is not generating a means to that end.

II. ESTADO LIBRE ASOCIADO DE PUERTO RICO: CREATING PUERTO RICO’S CONSTITUTION

Section 20 of the Puerto Rican Constitution is clearly modeled on the Universal Declaration of Human Rights (UDHR), particularly Articles 23, 25, and 26. The UDHR was drafted as a response to the widespread human rights abuses that took place both during and immediately after World War II. Because it is merely a UN General Assembly resolution, it is not legally binding. For its aspirations to become legally binding, the Declaration’s terms were copied and split into two significant treaties: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural

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33 This is a complicated idea that is outside of the scope of this Note. For further reading on this issue, see Deborah Ward, The White Welfare State: The Racialization of U.S. Welfare Policy (2005).
Rights (ICESCR). The United States is a ratifying member of the ICCPR, but is only a signatory of the ICESCR.

The progression of the two treaties followed the contours of the new global political order following World War II: the ICCPR was championed by the United States and its allies, while the ICESCR was promoted chiefly by the Soviet Union; the split went back to the original political fighting over the UDHR. The Western bloc preferred the ICCPR’s construction of negative obligations, outlining what the state was not meant to do (e.g., infringe on democratic processes). The Eastern bloc preferred the ICESCR’s progressive vision for positive obligations, which are aspirational and call upon the state to provide social welfare. These preferences seem natural: the capitalist Western states argued for the bare minimum of Marshall’s first and second stages of citizenship—civil and political citizenship—while the socialist and communist Eastern states advocated for realizing social citizenship (while frequently undermining the first two stages).

The conclusion of World War II ushered in a wave of decolonization as the British and French empires relinquished colonial holdings or lost them to internal militant uprisings, primarily in Africa and Asia. Consequently, United Nations membership more than doubled between 1948 and 1966. These newly established nations could appreciate the value of the hard-won right to self-determination. That right is enshrined in the UN Charter, the ICCPR, and ICESCR. The right to

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42 Id. at 19.

43 See id. at 19–21.

44 However, the Western bloc—particularly the United States and United Kingdom—also frequently denied meaningful fulfillment of civil and political citizenship, namely to nonwhite racial groups and women. See id. at 12.

45 See id. at 10–11.

46 Id.

47 U.N. Charter art. 1, ¶ 2.


self-determination, and the methods for obtaining it, constituted a point of acute tension for the Western and Eastern blocs.\textsuperscript{50} The core of the right is that “peoples” (a term which, problematically, is not defined in either treaty or the UN Charter) have the inherent freedom to make their own political decisions, including on questions of status.\textsuperscript{51} This is especially striking, and demonstrates the blossoming power of the new UN members, because self-determination is not mentioned in the UDHR.\textsuperscript{52} During this period at the UN, the Soviet Union was an outspoken advocate for self-determination rights, because the USSR was scrambling for the political support of newly independent states.\textsuperscript{53} Not to be outdone, the United States consistently sought to portray the Soviet Union as a malignant colonial power.\textsuperscript{54}

Puerto Rico was involved in the wave of advocacy for self-determination. At the close of World War II, self-determination for the island morphed into a seemingly attainable goal rather than a distant dream: mainland politicians began to pay attention. The Tydings-Piñero bill of 1945, the third in a series of bills proposed by Senator Millard Tydings of Maryland, would have prompted a status plebiscite in Puerto Rico for Puerto Ricans to choose between statehood, independence, or associated statehood.\textsuperscript{55} Although the bill died in committee, it was significant because it signified an “attempt to advance self-government through the recognition of the right of the people of Puerto Rico to adopt a constitution of their own; it explicitly placed the relations between the United States and Puerto Rico on a mutual consent basis; and it proposed substantial changes in such relations.”\textsuperscript{56} Previous political failures for self-determination legislation, including the Elective Governor Act,\textsuperscript{57} severely disappointed Puerto Rican Governor Luis Muñoz Marín and his allies in the Popular Democratic Party.\textsuperscript{58} In response, he and the resident commissioner began drafting what would become Public Law 600, which would prompt the organization of a Puerto Rican constitutional convention.\textsuperscript{59}

\textsuperscript{50} See Victor Kattan, Self-Determination as Ideology: The Cold War, the End of Empire, and the Making of UN General Assembly Resolution 1514 (14 December 1960), in INTERNATIONAL LAW AND TIME 441, 442, 447 (Klara Polackova Van der Ploeg, Luca Pasquet & León Castellanos-Jankiewicz eds., 2022).


\textsuperscript{52} See G.A. Res. 217, supra note 35.


\textsuperscript{56} Id. at 109.

\textsuperscript{57} Although a version of the Elective Governor Act was eventually passed, allowing Muñoz Marín to be democratically elected in 1948, earlier versions would have given the governor the power to make domestic political appointments, a power held exclusively by the U.S. president. The Department of the Interior also chafed Puerto Rican politicians by repeatedly insisting that the Act would not change the nature of the relationship between Puerto Rico and the federal government. See id. at 104–06.

\textsuperscript{58} Id. at 109.

\textsuperscript{59} Id. at 110.
Public Law 600 was divisive in Puerto Rican politics, even within domestic political parties, whose members disagreed about what the law would mean for the future. Members of the Nationalist Party, enraged by what they saw as an extension of the island’s colonial condition, participated in deadly riots across Puerto Rico. Some extremist Nationalist Party members pursued unsuccessful assassination attempts against Governor Muñoz Marín on October 30, 1950, and against President Truman two days later. Civil and political turmoil notwithstanding, Public Law 600 was approved by 76.5% of Puerto Rican voters in the referendum held in June 1951. It was finally time for a constitutional convention.

A. The Puerto Rican Constitutional Convention and Bill of Rights

The constitutional convention convened in September 1951, attended by delegates selected in a domestic election held August 27, 1951. Technically, under Public Law 600, the convention only had two essential goals: to create a republican form of government for Puerto Rico and to include a bill of rights in the constitution. The Bill of Rights Committee was established to focus on the latter goal and was headed by Jaime Benítez Rexach. The Puerto Rican Bill of Rights is different from the United States’ from its first words: “The dignity of the human being is inviolable.” Unlike the U.S. Bill of Rights, which frequently centers negative rights (that is, what the government should not do), the Puerto Rican Bill of Rights mainly addresses aspirational rights that aid the individual, and the tone of negative rights reappears chiefly in the provisions that are clearly lifted from the U.S. Bill of Rights. This difference mirrors the opposing views of the Western and Eastern blocs in the Cold War.

The Puerto Rican Bill of Rights was, compared to the federal Bill of Rights and the same of incorporated states at the time, very progressive. Section 7 abolished the death penalty, and Sections 16, 17, and 18 enshrined many of the

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60 Id. at 113.
61 Id.
62 Id.
63 Id. at 113–14.
64 Id.
67 P.R. CONST. art. II, § 1.
68 See id. §§ 2, 5–6, 8, 11, 13, 16–18, 20.
70 See id. § 7. State abolition of the death penalty was a rarity. For more information, see State by State, DEATH PENALTY INFO. CTR., https://deathpenaltyinfo.org/state-and-federal-info/state-by-state (last visited Jan. 27, 2024).
fair labor standards that, in decades past, had to be furiously litigated in U.S. mainland courts. Section 20 was also a progressive declaration, as much of it was lifted directly from the UDHR, adopted at the UN a mere four years before. Perhaps the United States’ acceptance of the UDHR blinded the Bill of Rights Committee to the possible Congressional resistance around Section 20. Moreover, the delegates may have assumed that since Public Law 600 gave them such wide latitude in deciding the actual content of the constitution, Section 20 would not meet much resistance. But the delegates were not mere idealists: in acknowledgment that Section 20’s goals would probably not be immediately realized in a place as economically desperate as Puerto Rico, and perhaps as a political concession to the U.S. Congress, the Committee added an “escape clause” to the Section that labeled it as aspirational and progressive only.

The convention adjourned on February 6, 1952, after several months of debate. The draft Constitution was then put before Puerto Rican voters in a referendum held on March 3, 1952. The Constitution was overwhelmingly approved.

B. Debates in Congress and the Removal of Section 20

Public Law 600 required that after the constitutional referendum approved the draft, the constitution be sent to the president, who would then, if he “[found] that such constitution conform[ed] with [Public Law 600] and . . . the Constitution of the United States,” send the proposed document to the United States Congress for consideration. Two important political points emerge from this arrangement. First, it implies that the president was meant to truly assess and pass judgment on the Puerto Rican Constitution. If this is the case, then President Truman’s opinion on the matter should have carried weight in Congress, at least among his fellow Democrats. Interestingly, nothing in President Truman’s letter indicates a desire to change anything about the proposed constitution, including a lack of concern about Section 20. In fact, he seemed to approve of the Bill of Rights as it was drafted:

The new Constitution contains a bill of rights which corresponds with the highest ideals of human dignity, equality and freedom. The bill of rights includes provisions which are similar to our own basic

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71 See P.R. CONST. art. II, §§ 16–18.
74 See id.
75 MONGE, supra note 55, at 114.
76 Hearing on H.R.J. Res. 430 Before the H. Comm. on Interior and Insular Affs., 82d Cong. 4 (1952) [hereinafter House Hearing].
77 Id.
79 Id.
Constitutional guaranties. In addition, it contains express provisions regarding public education, conditions of labor, and the protection of private property. The bill of rights also recognizes the existence of certain human rights, but acknowledges that their full enjoyment depends upon an agricultural and industrial development not yet attained by the Puerto Rican community.80

Second, regarding the right to self-determination, there is an obvious argument to be made that requiring the approval of a higher political power for the formulation of a constitution goes against a true realization of the right. Although Puerto Ricans were technically allowed to convene a constitutional convention, the supervision of the U.S. Congress—and the requirement that the Puerto Rican Constitution not prove “inconsistent” with the U.S. Constitution—necessarily limited Puerto Rican’s political future to the narrow options allowed it by the colonial power. Section 20 is a perfect example of how the United States disapproved of a measure that would have made Puerto Rico politically different from other political units in the United States.81

Additionally, Section 20 may have loomed as an inadvertent reminder to Congress about the supposed threat socialism or communism posed to their power over Puerto Rico, but more importantly, to other Central and South American nations.82 Economic, social, and cultural rights were already heavily tainted with the approval of the USSR as the background debate over the ICCPR and the ICESCR steadily worsened.83 Perhaps this fear best explains what happened in Congress during the spring of 1952.

In the U.S. House of Representatives, the committee in charge of hearings on Puerto Rico’s Constitution (and all other policy matters regarding the territories) was the Committee on Interior and Insular Affairs, at that time chaired by Arizona Democrat John Murdock.84 Interestingly, Murdock had also been a member of the House Committee on Un-American Activities during the 79th Congress.85 As the Chairman, Murdock led the hearings on the bill proposed to approve the Puerto Rican Constitution: House Joint Resolution 430.86 Antonio Fernós-Isern, the Resident Commissioner of Puerto Rico and the man who served as the President of

80 Special Message to the Congress Transmitting the Constitution of the Commonwealth of Puerto Rico, supra note 1.
82 See House Hearing, supra note 75, at 16.
86 H.R.J. Res. 430, 82d Cong. (1952); House Hearing, supra note 75, at 1.
the Puerto Rican constitutional convention, introduced the Resolution and testified on the creation of the constitution.\footnote{See House Hearing, supra note 75, at 1.} After Fernós-Isern discussed the legitimacy of the constitutional referendum (and attempted to refute outside claims of “dictatorship”\footnote{Id. at 10. The Committee specifically discussed the assertion that the Puerto Rican elections regarding Public Law 600, the delegates to the convention, and the constitution were illegitimate. Id. at 11–15, 17–18.} in Puerto Rico), the first thing Representative Clair Engle turned the Committee’s attention to was Section 20, “especially in the light of some of the things that we hear being said around the country these days.”\footnote{Id. at 19. Engel did not clarify what he was referring to, and the text of the hearing does not provide further hints, but the fact that he is saying this in the context of Section 20 likely means he is alluding to claims of the spread of socialism- or communism-related ideology in the United States.} Engle then referred to an internal document distributed to the Committee by Fernós-Isern, which Engle read aloud:

> The constitutional convention was fully aware of the fact that the people of Puerto Rico lack at present economic resources necessary to fully implement the necessary rights. They decided to place them in a different category than the rights set forth in the previous section. Accordingly, this section does not guarantee the rights stated therein, but recognizes them and pledges the commonwealth to work for their progressive utilization.\footnote{Id. at 19–20.}

Engle apparently took issue with this attempt at distinction: “I am a little puzzled as to how you can state the right exists, and still not implement it.”\footnote{Id. at 20.} This is a curious inhibition, considering that was precisely the goal of the UDHR—however, the Committee may have doubted that an aspirational statement was appropriate for a Bill of Rights, despite the fact that Fernós-Isern clarified that the goals in Section 20 were not guaranteed legal rights. Representative Wayne Aspinall interrupted in defense of Section 20, calling the Puerto Rican Constitution “not only a practical instrument,” but also an instrument of ideals.\footnote{Id. at 21.}

Representative Monroe Redden’s criticism of the draft constitution took the tone of the contract-charity paradigm proposed by Professors Fraser and Gordon. Redden remarked that Section 20:

> holds up the hope[,] as it has been done somewhat in the United States[,] that you don’t need to lay things aside in case of a rainy day but just simply depend upon that right which is expressed in law to feed us and clothe us and shelter us in event sickness or ill health or misfortune overtakes us. And in that you may find the greatest danger
that comes to people in what they would like to see realized out of this [c]onstitution.93

This kind of rhetoric illustrates the distrust that several members on the Committee had in the idea of social welfare guarantees, even aspirational ones. Representative Norris Poulson reiterated Redden’s point by adding that the guarantees in Section 20 were “something that your people are going to have to achieve themselves.”94 Poulson’s phrasing indicates how Puerto Ricans were viewed as a completely separate body politic despite being American citizens and subject to American rule. After Fernós-Isern finished testifying, the Committee unanimously voted to approve the Constitution as it was, including Section 20,95 but the full Congressional vote was yet to come.

In the Senate, similar hearings were held on the Senate version of the House Resolution, Senate Joint Resolution 151.96 The Senate Committee on Interior and Insular Affairs was chaired by Democrat Joseph O’Mahoney of Wyoming.97 The Senate Committee took similar issue with Section 20. The Chairman of the Bill of Rights Committee at the Puerto Rican constitutional convention, Jaime Benítez Rexach, testified before the Committee and was also grilled on the socioeconomic rights his Committee decided to include via Section 20:

Senator LONG[:] [“]Do you construe [Section 20] as imposing any possible obligation upon the United States of America to provide any of these benefits? [“]

Mr. BENÍTEZ[:] [“]No, sir; and it does not impose obligation[s] either on the government of Puerto Rico to provide these things. These are set . . . as basic goals which the people of Puerto Rico recognize . . . as objectives for which to strive. They are set out in a separate category and are placed in a class by themselves to differentiate them from those set out in the rest of the sections of the bill of rights. [“]98

Senator Russell Long was a Democrat from Louisiana who would go on to have a storied career regarding social rights in general, particularly governmental welfare. When the Nixon administration was later considering welfare reform, Long, as Chairman of the Senate Finance Committee, “won passage of a new device called the Earned Income Tax Credit. Cash payments would now be made through

93 Id. at 26–27.
94 Id. at 28 (emphasis added).
95 See id. at 29.
96 Approving Puerto Rican Constitution: Hearings Before the Comm. on Interior and Insular Affs. on S. J. Res. 151, 82d Cong. (1952) [hereinafter Senate Hearings].
the Internal Revenue Service to extremely low-paid working families with children.”99 This move radically changed the federal welfare system, which previously had not required that beneficiaries be employed. Long’s theory was that “[Family Assistance Plan]-style stipends to nonworkers could threaten democracy with popular demands for ever-larger handouts . . .”100 Long’s distaste for the kind of widespread, nonrestrictive social rights that Section 20 stood for comes through in the tone of his questioning at the hearings.

Republican Senator George Malone continued with the attack on Section 20, asserting that it was inconsistent with the U.S. Constitution:

In other words, the government is primarily responsible to see that these rights—and you specify them as rights—that they do have a job, that they do have a home, that they do have a social standing, and they do have these various things. Our Constitution does not say that at all. They provide conditions under which additional opportunities are provided for these things, whereas [Section 20] set[s] them down as a right.101

Senator Malone then asked Benítez if someone could bring a suit saying that their rights under Section 20 had been violated, and Benítez answered in the negative.102

The Senate Report made by the Committee following these hearings was dismal for the fate of Section 20:

Section 20 of article II purports to recognize a number of so-called human rights. We may pass for present purposes the question as to whether these or any of them are in fact human rights and under our system of government should have constitutional protection.

To constitute an effective right there must be a well-founded and enforceable claim with a correlative and enforceable duty upon others to satisfy it. Corresponding enforceable duties to the rights asserted cannot be determined and fixed under section 20, and therefore it is unrealistic, confusing, and misleading to assert such rights in a constitution which is intended to be a fundamental and clear statement of matters which are enforceable and of the limitations on the exercise of power.

Because of the novelty of the assertion of these so-called human rights as constitutional rights the confusions and uncertainties to which we

100 Id.
101 Senate Hearings, supra note 96, at 51.
102 Id. at 52.
have referred are not remedied by our judicial precedents and constitutional history.\footnote{S. REP. NO. 1720, at 1–2 (1952).}

This discouraging assessment of Section 20 apparently stuck in the minds of other Congress members in both houses. Under Public Law 447, passed by both houses of Congress, the Puerto Rican Constitution was approved with the caveat that Section 20 was completely removed.\footnote{Act of March 3, 1952, Pub. L. 82-447, 66 Stat. 327 (1952).} A piece of the Puerto Rican Bill of Rights that none of the Congressional witnesses for Puerto Rico thought of as terribly problematic had been the subject of much debate and died by the hands of the Senate Committee.

The removal of Section 20 seemed to be a marker of the colonial control that the federal government still wielded over Puerto Rico—an imbalance that “incensed”\footnote{MONGE, supra note 55, at 116.} then-Governor Muñoz Marín. Another aggravation was the condescension the Puerto Rican witnesses often endured. At one point in the Senate hearings, Senator Olin Johnston expressed discomfort with allowing Puerto Ricans to amend their own constitution without the approval of the U.S. Congress, and an amendment to prevent that situation was proposed and approved.\footnote{Id. at 117.} The amendment was made into a compromise, wherein Puerto Ricans could not pass amendments inconsistent with the U.S. Constitution, the Puerto Rican Federal Relations Act, or Public Law 600.\footnote{Id.} Moreover, during the Senate hearings, Senator Malone asked Jaime Benítez Rexach if he knew the difference between the democratic and republican forms of government.\footnote{See Senate Hearings, supra note 96, at 52.} It should perhaps have been foreboding for the Puerto Rican witnesses that the hearings in both houses of Congress took such a patronizing tone—but was that not the tone that Puerto Ricans had heard from the mainland for five decades?

III. THE WAY FORTH: SOCIAL CITIZENSHIP AND PUERTO RICO’S POLITICAL STATUS

Why does it matter that Section 20 never went into effect? While the inclusion of Section 20 was not going to transform the welfare scheme for Puerto Rico, its exclusion was nonetheless indicative of long-term federal policy toward Puerto Rico. Before, during, and after the Puerto Rican constitutional convention, Congressional and bureaucratic officials reiterated that the creation of a constitution for the territory would not fundamentally alter the relationship between Puerto Rico and the federal government.\footnote{See Juan R. Torruella, Why Puerto Rico Does Not Need Further Experimentation with Its Future: A Reply to the Notion of “Territorial Federalism,” 131 HARV. L. REV. F. 65 (2018).} This constant, nagging insistence from the federal government was grating on Puerto Rican officials who

\begin{footnotes}
\footnote{S. REP. NO. 1720, at 1–2 (1952).}
\footnote{MONGE, supra note 55, at 116.}
\footnote{Id. at 117.}
\footnote{Id.}
\footnote{See Senate Hearings, supra note 96, at 52.}
\end{footnotes}
desperately wanted a material change. The Insular Cases, particularly Downes v. Bidwell, branded Puerto Rico as politically different from states, not entitled to the same rights as states, and subject to the plenary power of Congress as an unincorporated territory without a clear path to statehood. If a change in the Puerto Rico-United States relationship was not pursued, then that plenary power presumably continued without changed boundaries.

Even setting aside the denial of self-determination that allowing Congress to control entire segments of Puerto Rican policy necessitates, Congressional authority has been a disaster for Puerto Rico’s economy and the quality of life of Puerto Ricans. With a population of over three million people, Puerto Rico has a 41.7% poverty rate. To put that into perspective, Nevada, a state with a comparable population, has a poverty rate of only 12.5%. Puerto Rico has an unemployment rate of 5.8%, compared to the current federal rate of 3.8%. Because of these brutal conditions, Puerto Ricans have repeatedly sued to be treated the same as other U.S. citizens for federal aid programs and other social welfare. In the most recent attempt, United States v. Vaello Madero, the Court held that the Constitution does not require that Congress extend Supplemental Security Income benefits to Puerto Rican residents (and thus place them on equal footing with their fellow citizens who are residents of states, who are potentially eligible). Thus, even to the very limited extent that the average American experiences social citizenship, Puerto Ricans experience a lesser version for no reason other than Congress prescribes such a distinction under the authority of the Insular Cases.

Of course, Puerto Rico’s complete lack of meaningful representation in the U.S. Congress prevents these severe poverty issues in Puerto Rico from being addressed. Since the resident commissioner does not have a vote with bite, Puerto Rican policy initiatives are entirely dependent on the goodwill of other Congresspeople. Assuming that members of Congress are motivated by what will get them more votes in the next election, it is discouraging that mainland citizens

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110 See Monge, supra note 55, at 116.
113 Id.

At the time of this Note’s writing, the U.S. House of Representatives has recently passed a bill that would set up a binding plebiscite on Puerto Rico’s political status, of which the options are continued commonwealth status, statehood, or independence.\footnote{See Puerto Rico Status Act, H.R. 8393, 117th Cong. (2022).} While it is unlikely this bill will become law, the bill represents the continuing discontent of Puerto Ricans and their current relationship with the federal government. Because Puerto Rico does not have representation in Congress to the same extent as states and does not have the kind of economic power that would make it politically important to other lawmakers, the island is in a limbo state that even the COVID-19 pandemic and two disastrous hurricanes\footnote{See Amelia Cheatham & Diana Roy, Puerto Rico: A U.S. Territory in Crisis, COUNCIL ON FOREIGN RELS., (Sept. 29, 2022), https://www.cfr.org/backgrounder/puerto-rico-us-territory-crisis.} could not shake. Moreover, since the dire economic and living conditions in Puerto Rico have caused an astonishing exodus of island residents,\footnote{See New Estimates: 135,000+ Post-Maria Puerto Ricans Relocated to Stateside, CTR. FOR P.R. STUD., (Mar. 2018), https://centropr-archive.hunter.cuny.edu/sites/default/files/data_sheets/PostMaria-NewEstimates-3-15-18.pdf.} one has to wonder what will be left of Puerto Rico to fight for in the future.

CONCLUSION

The removal of Section 20 from the Puerto Rican Constitution is only one piece of the extensive, ugly history of American colonialism, which continues to this day. While extensive research has been done on the so-called status question of Puerto Rico, the reality is that due to the power imbalances inherent to the Puerto Rico-United States relationship, commonwealth status is probably not disappearing any time soon. Therefore, more must be done to analyze how the disparate treatment Puerto Rico receives under the current political framework fails to realize social citizenship and critical welfare for an island that has been plundered for four hundred years. It may be that instead of demanding a change in status, advocates should begin focusing on reforming the relationship under the current Puerto Rican Constitution, either by amending it or pushing for a new constitutional convention. After that relationship is reevaluated, statehood or independence may become realistic goals. In any case, as the statistics on socioeconomic conditions in Puerto Rico show, the current commonwealth status is untenable and an embarrassment to the United States as a supposed liberal democracy.