

WESTERN NEW ENGLAND
UNIVERSITY SCHOOL OF LAW

Lex | Brevis

Year End Wrap-up



Lex Brevis

Dec 2018 Volume 46 Issue 2

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A Place People Would Want to Call Home

by Alexander Cerbo, 1L

“If you have the power to make a place, once thought of as somewhere to run from, a place people would want to call home, even if it’s within a small sphere of influence, you have done something meaningful.” This is what veteran, Matthew Feehan’s biggest takeaway was from his time of service. When asked why he decided to go into the military, Feehan simply replied: “I wanted to help people.” And he sure did.

Beginning his career of service in the United States Coast Guard Reserve as an enlisted boatswain’s mate in Port Security in Unit 301, Feehan served two years traveling with that unit from Cape May, New Jersey, to as south as Camp Lejeune, North Carolina, and back north to Cape Cod. Once in the Cape, he transferred to the Massachusetts Army National Guard. During his time with the National Guard, Feehan

enrolled in Boston University’s Reserve Officer Training Corps, where he earned his commission as a military officer. After three years, he led infantry soldiers in Cambridge, Massachusetts as a National Guard Officer, traveling to Fort Benning, Georgia. Later on, he was deployed to the Northern Sinai Peninsula, in support of the Multinational Force and Observers mission. There, he served as a force protection platoon leader and, most notably, “spearheaded” an education initiative, which included multiple classes such as EMT-B, (Basic Emergency Medical Training), and FAST, (Functional Academic Skills Training), which provides soldiers with on-duty instruction in reading and math.

Even now, as a student here at Western New England University School of Law, Matthew continues to learn from his time of service. “I’ve

learned a lot from my time of service... I am still learning more each day I put on the uniform” he says. On a deeper level, Feehan reflects often on the “real world,” specifically about the divide he finds between destinations desired, and undesired. Feehan notes: “I think about the artificial barrier between the places people generally want to be and the places where people don’t want to be.” Feehan also says that those places where people “don’t want to be” can even be found in the U.S. Yet, he finds that these places are often not thought of nor recognized by most. “Those places where people don’t want to be can be easily found in the United States, yet we talk about them, removed in classrooms, as if they are in a giant vacuum.”

It does not appear, however, that this barrier has stopped veterans, much like Feehan, from going to places many wish not to. Feehan exclaims: “Life is short. If you have the power to make a place, once thought of as somewhere to run from, a place people would want to call home, even if it’s within a small sphere of influence, you have done something meaningful.” Here, Feehan touches upon an honorable and often unappreciated

responsibility of the men and women who serve our country- they serve those in other countries as well. All around the globe, our armed forces have freed those from oppression, assisted others in times of great need, and has taken a fallen place, riddled with corruption, famine, disease, and worst of all, hopelessness, and have provided meals, medical care, and optimism. American soldiers carry the distinct and ever powerful responsibility of not just ensuring a safer America, but a safer world. From Korea, to Vietnam, to the Middle East and across the globe, American men and women in uniform do every day what Feehan calls upon us all to do: to go to a place most run from and transform it into a place people would want to call home.

Feehan does recognize the challenges that our veterans face today, most notably: “to fill the shoes of men and women before us.” Feehan is thankful for what he refers to as a “blessing” American soldiers experience today-the positive public perception our nation has of those who serve. He says: “We have been blessed with a shift in American public perception, not aimed at us but meant to correct

the wrongs done to our friends and family who served in Vietnam and other unfavorable wars of the past.” He continues: “Now instead of being spit on in the street or being called “baby killers,” we are offered 1st-class seat upgrades.” Yet, this positive recognition by the American public must not be taken for granted, as those in uniform have not always been looked upon favorably. “We, as veterans, have to remember why we serve, and most importantly, those American men and women of our recent past who were not as lucky as us to receive favorable public perception.” This, Feehan finds, is the greatest challenge of those who protect the flag today.

As for what needs to be improved, Feehan calls for expanded protections of The Uniformed Services Employment and Reemployment Rights Act of 1994, from employees to students. Feehan says “The sooner Congress acts to protect service members and veterans from adverse actions-as a result of military service-from colleges and universities, the sooner we can make good on congressional intent to make the transition between civilian life to active duty and back again as smooth as possible.” As for Feehan, his transition from service to civilian life holds true, as he hopes to continue to do just that: serve. After

graduation, he hopes to “help a greater number of people,” working for the federal government in the Miami, Florida area.

Well, Officer Feehan, we wish you the best of luck and thank you, and all of those men and women, who serve in the armed forces.



COLOR OF LAW ROUNDTABLE SERIES



Headed by Dr. Bridgette Baldwin and Dean Sudha Setty, the Color of Law Roundtable Series highlighted ADA Clarissa Wright. ADA Wright has been practicing law for over 16 years. She previously owned and operated her own law practice in Worcester County, as well as worked for a private law firm out of Norwood, MA. ADA Wright received her J.D. from Western New England University School of Law in 1999 (she wrote for *Lex Brevis*!) and her B.A. in Accounting from Clark Atlanta University.

Law Review Symposium: Anthropocenic Disruption, Community Resilience and Law





3 Things You Need to Know about Your ABA Membership

By. Tinuke Fadairo, ABA Representative

Whether you're an enthusiastic 1L or a soon-to-be sleepless graduate preparing for the Bar Exam, the American Bar Association is an excellent resource for law students. Start preparing now for a successful law career by using your ABA membership for freebies, legal resources, student-only discounts and networking tools. Here are three things you need to know about ABA student membership:

1. **You're already a member!** Your law school cares about your future and already signed you up so take advantage! If you want to make a small investment to get more benefits from our partnerships with Kaplan, Quimbee, and Themis, you can upgrade to Premium membership for **\$25 a year.**

2.

2. Save money on things you already use. Premium members save over \$500 and get benefits such as a free trial Quimbee Gold-level subscription plan, free Themis practice sets and deals on West Academic study guides and casebooks. These benefits provide a hub of the best resources for Premium student members.

3. Find your niche. Choose from more than 30 ABA Practice Specialty Groups. Learn what it takes to be a successful lawyer from experienced professionals and begin building your legal network. Each group centers on a specific area of law or career stage, facilitating more in-depth examination of issues, regulations, and trends.

Visit abaforlawstudents.com/gopremium for more information!

Ivy Letters: Practical Advice on Passing the Bar Exam

by **Attorney Shenandoah Titus,**
Alumnus

Ivy Letters: Practical Advice on Passing the Bar Exam, is unique in the bar exam preparation market. The book has a conversational tone and is premised on practical, down to earth advice that will help the bar candidate think more astutely about the bar exam and consider some blind spots that virtually every bar prep book on the market overlooks.

Very importantly, *Ivy Letters* helps the bar candidate get into the proper *mental space* that is necessary to do well on the bar exam. Most bar prep books fail to appreciate the value of *mentally preparing oneself to win* on this challenging exam.

In this work, Attorney Shenandoah Titus makes no promises which he cannot deliver (and indeed no book in good faith can promise success on the bar exam). The reader will find no gimmicks, no short-cuts, no easy recipes to success on the bar exam that do not call for hard and smart work.

Moreover, the author does not shy away from controversy in this book. He boldly asserts that the Multistate Bar Exam (MBE) can actually be an asset, yet the MBE has been exploited by the commercial bar market as a fright tactic to boost commercial bar prep sales. Having scored well above the national average on the MBE, Attorney Titus provides insight based upon personal experience.

Attorney Titus, a former official with the United States Department of Homeland Security, is Founder and CEO of *WARN* (Whistleblower & Anti-Bullying Resource Network). He is author of the companion book – *Ivy Letters: Meditations for Resilient (repeat) Bar Examinees*.

He writes from the heart and from practical experience, all with the goal of helping bar candidates nationwide achieve their dream of earning their law license. Equally important, his books seek to encourage future attorneys to be thoughtful, passionate advocates for justice – especially on behalf of the underdog.



About the Author

Shenandoah Titus is the Founder and CEO of *WARN*, (*Whistleblower & Anti-Bullying Resource Network*). He served in leadership positions within municipal, state and federal government for over 21 years, most recently with the United States Department of Homeland Security (DHS). As a whistleblower himself, Shenandoah resigned from DHS on April 13, 2018 and founded *WARN* on Independence Day, July 4, 2018.

Shenandoah earned his Bachelor's and Master's degrees at Cornell University, where he received various honors, including being named to the *Dean's List* and an *Outstanding Senior*. He holds a second Master's degree with a concentration in Government from Harvard University. He earned his Juris Doctor at Western New England University School of Law. Shenandoah completed a 24 – week executive program at Harvard Law School.

He is a licensed Attorney and member of the District of Columbia Court of Appeals Bar (DC Bar) and the Idaho Bar, respectively. He is a consultant and a Certified Fraud Examiner®.

Attorney Titus is the author of the following books:

Ivy Letters: Practical Advice on Passing the Bar Exam

Ivy Letters: Meditations for Resilient (repeat) Bar Examinees

The Whistleblower: Defeating Bullies, Harassers, and Management Retaliation {publication expected in January 2019}

Nuts and Bolts of staying within the “Four Corners”

by Julie Page, 3L

We have all heard the phrase “four corners of the document,” but rarely do we see the importance of what that phrase means. This past semester the Women’s Law Association (“WLA”) took on that very topic in practice as it applied to the Massachusetts Ballot Measure titled the Initiative Petition for A Law Relative to Patient Safety and Hospital Transparency, also known as “Question 1”. This measure was to impact Section 231 of Chapter 11 of the General Laws and was to be known as “The Patient Safety Act”.

That is where the trouble began. The question, put before the voter, was purported to address patient safety. Did it really? Campaign commercials from either side claimed their position was the truly safe side. How was a voter to know? Could the TV

commercials be trusted? Could the so-called experts be trusted? What about the numbers making claims that 86% of nurses backed “Question 1”? Could that be trusted? Could lawn signs saying, “Nurses say Yes” be trusted when they were right next to lawn signs that said, “Nurses say NO”? How was a voter to know what is right? Why was this being put before the voters instead of in the state legislature?

The last part of that is the easiest to answer. This question has been before the legislatures off and on since at least 2008.¹ Each time it has come up, the legislature has ruled based on the statutes and case law. Most of these cases were brought in the labor law court but in 2014 the state legislature did rule on minimum nurse to patient ratios for Intensive Care Units (“ICU”) as defined in

1. Massachusetts Nurses Association v. Commonwealth of Massachusetts Templeton Development Center, SUP-08-5403, (MA-D.L.R.) 2008.

2. Joshua Solomon, Question 1 driving voter interest, spending – Issue of Nurse staffing still puzzling to many, Greenfield Recorder, October 30, 2018 at A1, A8.

M.G.L c. 111, § 231.² Yet here the question is coming up again, but this time before the voters. Because it's before the voters, it's in the media. Because it's in the media, no one is quite sure what to believe.

This is where we as future attorneys can do what we have been trained to do; look within the four corners of the document. This is precisely what the Women's Law Association did. Speakers from both the "No on 1" and "Yes on 1" sides were invited to come speak at Western New England University School of Law's Common Room at noon on October 22, 2018. The presentation was set to include an analysis of the language from within the four corners of the document and then information from both sides.

Both sides were sent sample questions in advance. The "No on 1" side was happy to answer questions and sent a representative. As for the "Yes on 1" side, the Respondent seemed to not understand the medical aspects of the questions being asked. That level of misunderstanding seemed prevalent across many respondents on the 'Yes on 1 side.' This failure to add clarity leaves us the only option of going back to the document they wrote and analyzing the language itself.

This is where the real lesson for law students lies. We may not always know the history of the case being presented to us. Those presenting the information may not even understand what they, themselves are presenting. We, however, do not have the luxury of speaking without knowing. It's up to us to dig. It's up to us to analyze. It's up to us to look past the slogans, the TV adds, the talking heads and the law signs. We are held to a higher standard. That, my colleagues, is as it should be.

Unsung Heroes: Meet the Immigration Protection Project

by Gissell Rodriguez, 2L

The recent rhetoric regarding immigration in our country has been negative. There is a lot of confusion on what role the law plays in immigration. One of the problems faced in the immigration field is a *lack of representation for unauthorized immigrants*. Here, on our campus at Western New England University School of Law, there have been efforts by Professors and students to provide legal access to immigrants, both authorized and unauthorized. The interview below was conducted with one of our own, Professor Harris Freeman, who is one of the founders of the Immigration Protection Project of Western Massachusetts. My hope is that this interview would shed light on this issue, relay some of what has been done and inspire more students and faculty to act.

Q: Thank you for taking the time to meet with me, Professor Freeman. Would you start off by giving us some background information on what the Immigration Protection Project is?

A: The Immigrant Protection Project is a particular project of the ACLU of Massachusetts. The purpose of the project is to provide immigrants in the Western part of the state with legal resources that are either hard to find, or don't exist. Our office is in

North Hampton but we are a valley wide project. We couldn't do this without our partners who give lawyers a way to help people who are distrustful of the system. We have one paid staff person, Javier, who is a Chilean Immigrant and who is a fantastic organizer for the project. We also have a group of lawyers that are part of the coordinating committee.

Q: How did the Immigration Protection Project begin?

A: We began the project shortly after Donald Trump was elected President because we anticipated that there would be heightened immigration enforcement in the area. Our biggest concern at that point was that when an individual is picked up by ICE because they are suspected of being in the United States without authorization, they are put into detention pending a hearing on whether they have lawful grounds to stay in the United States. At that hearing, while they have a right to an attorney, they don't have a right to a free attorney. There are not enough attorneys who can help people at the very initial stages of their case in immigration court.

Q: How did you become involved with

the Immigration Protection Project?

A: I was among the first people that founded the project. I have been a cooperating ACLU attorney for a long time and I have represented individuals on the ACLU's behalf in a range of cases. After President Trump was elected, some people approached me and other ACLU affiliated lawyers and wanted to know if we could do a hotline for immigrants, like we do for other civil liberties issues that the ACLU handles in the Western part of the state. I said, "Sure, that doesn't seem like it's so hard". It turned out to be a gigantic task because the need is so great. It's not so easy to find an attorney to refer an immigrant to if they need help. There are also language barriers. In order put together an effective call center that could connect immigrants to legal services we also needed to have people who were competent at speaking Spanish fluently. Part of the project, we realized, was that we had to engage dozens of volunteers who are bilingual, in addition to engaging dozens of lawyers who had to be trained to do the legal end.

Q: Does having an attorney present at the initial hearing really make a difference?

A: The biggest questions at this point are: "Whether you're going to remain in detention until your hearing?" or "Whether there are legal grounds for your release?" In order to effectively advocate for your release from detention while you are waiting for a hearing on whether you can stay in the United States, you really need a lawyer.

Q: What is the demographic of people the Immigration Protection Project

reaches?

A: There are so many immigrant populations in the greater Springfield area. But, we predominantly assist Latino immigrants from Central America. There are also a lot of people from the Middle East, South Asia, China, Cambodia, Russia, and Eastern Europe.

Q: What is the ACLU's relationship to the Immigration Protection Project?

A: This project is by the ACLU. This is a different type of project for the ACLU because they usually use their resources to mount impact litigation efforts. They're looking for a case that they can bring to the court to bring remedy or relief, not just for the particular individual involved. They want to set a standard for protecting rights in various areas. In this project, what we're trying to do is a little bit different. This is a little more grassroots based for the ACLU in comparison to some of the legal representation that they do. We're using the reputation and the skill set that some civil rights attorneys have to organize lawyers to represent a lot of folks who need representation. It's a type of civil Gideon.

Q: What do you mean by *civil Gideon*?

A: *Gideon v. Wainwright* established the obligation of the government to provide funding for attorneys to represent individuals who are indigent but subject to a deprivation of liberty in criminal proceedings. Since the *Gideon* case has been decided it has been widely recognized that there are people who are indigent and need to be represented in many other areas other than criminal law. But, they *don't have a right to counsel*

that is paid for. There have been various efforts in different ways in the public interest lawyering community to connect indigent individuals with lawyers who can help with civil and not criminal issues. That has been through pro bono services or getting the government to underwrite the costs of these kinds of services. This *civil Gideon* effort that we have is a strictly volunteer effort. We have organized anywhere from eighty to a hundred people in the area to provide free services to help people with legal problems. It's because we saw a need that wasn't being filled. We modeled this in part on the effort that was mounted on the US/Mexican border in recent years. Where attorneys have gone down there, who don't have extensive immigration experience and have in different ways helped to represent individuals in hearings to get them out of border detention.

Q: How have you seen the legal community respond to the need for lawyers?

A: The legal community has been eager to respond. When we first put out a call to train attorneys in basic removal defense and basics of family law that relate to immigrant needs, we had dozens and dozens of lawyers that wanted to be trained. It was not hard to find lawyers that wanted to help. We had a tremendous response from the community.

Q: What has been the Immigration Protection Project's reach?

A: Part of the project is that we have partners with organizations and institutions that have direct connections with the immigrant communities. That includes churches, educational organizations, community-based advocacy groups, organizations that teach English as a second language. Brightwood Health

Center in Holyoke has been particularly helpful by informing their clients that if they have legal questions or needs they can come to us. We have over thirty partners representing a wide range of organizations that have close contact with immigrants. We do work across state borders because many immigrants live in Connecticut and work in Massachusetts or vice versa. The detention center in Greenfield is the detention center for all of Western Massachusetts and if you are picked up by ICE in Connecticut, they will take you to Greenfield. We have developed relationships with organizations in Connecticut. That includes Connecticut's ACLU, New Haven's Legal Services, the UConn Law School Immigration Clinic and the Yale Immigration Clinic. We have connected with organizations from New Haven up to the Vermont border.

Q: Do you think the project could make a national impact?

A: The most recent example of our work is when we had twenty attorneys volunteer on a very short notice to represent transgender women who were detained in the Cibola County Correctional Center in New Mexico. People put down their paid work and within a week and a half we put together twenty parole petitions for these detainees. They were all released from detention.

Q: What types of lawyers have been involved in the project?

A: We have all different kinds of lawyers that have helped the project. We have attorneys with corporate backgrounds, criminal defense backgrounds, family law backgrounds, etc. There is training and there is support. It's become a community that helps each

other learn the law. We also have a way of sharing information so that lawyers can learn from some of the work lawyers have done before. We provide training for all the pro bono work that we ask lawyers to do.

Q: How have students been involved?

A: There have been a number of students who have been involved with IPP. Johanny Grullon, Kate Malone, Claudia Quintero a recent graduate, who is now on the coordinating committee as an attorney. Claribel Morales has helped with translation and Sarita Manigat who was an intern at the IPP.

Q: How can students get involved?

A: What we hope to do is take up another effort like the one in Cibola. In that context we hope that the work we take will have a place for students where they can earn their pro bono hours. They can do the research and legal writing that we need to put together pleadings to get people released from detention. If people stay in contact with PILA [Public Interest Law Association] they can learn what our next project will be. They can also talk to some of the students that have worked with us. If people are interested they can take Professor Wolf's Immigration course. They should think about whether they would like to do an internship or an externship working with community Legal Aid and Central West Justice. If students remain interested we can form a student based IPP chapter here to continue the work on an ongoing basis. We also do periodic "Know Your Rights" trainings at the detention center in Greenfield, in local organizations, churches and the like. We could train students to understand the basics of what immigrants need to know about their rights to

help the immigrants in the greater Springfield area. We are particularly interested in students who are bilingual. Being able to speak to immigrants in their first language really helps. Spanish, Arabic, Chinese and Russian languages are some of the languages we need help with.

Q: What kind of training would students need in order to get involved?

A: We don't expect the attorneys or law students who want to help to know anything about immigration law. For example, when we represent people at bond hearings at immigration court, the rules of immigration allow attorneys to provide limited representation. Typically, when you represent a person in a legal proceeding you have to represent them for the entire proceeding for all of the issues. But, here the court allows you to represent individuals for bond hearings only. Then if they are released from detention, they then have an opportunity to retain an immigration lawyer and we can help them find one. So, we don't have to teach lawyers or students everything about immigration law. We can train them on the one piece of the work we are doing. This is mainly what makes our project effective. We are able to take on some tasks that are critical in the initial stages of an immigrants fight to avoid removal.

Q: Have the faculty at the Law School responded to the need of the IPP?

A: The law school has had a tradition of many professors in many different ways being active in social justice issues. So, faculty have helped. Professor Miller, Sam Charron and Laura Fisher have been a part of the efforts that the IPP have taken on to help immigrants in the area.

Q: How can the community get involved?

A: The IPP is working on an effort to pass a safe community ordinance in Springfield. The purpose of a safe community ordinance is to prevent cities from serving as ICE agents and identifying people in the communities to be picked up by ICE. The goal is to enact an ordinance that makes it unlawful for local police forces or any city officials to ask for information that identifies individuals as an unauthorized immigrant. So, when a police officer stops an immigrant for running a stop light, a safe community's ordinance would make it unlawful for the police officer to ask what the person's immigration status is. This would be voted through by the city council. As this moves forward there might be opportunities for students to help educate people in the community about supporting an ordinance like that as well.

Q: I want to thank you again for your time and your efforts in providing legal access to those that can't afford it through the IPP. As we conclude, are there any last thoughts you would like to share with the readers?

A: You don't have to be an expert in an area of law to help citizens and people who are not citizens, who are in need of legal services and can't afford it. There are avenues for involvement. To students, many people on the faculty are there to help students find ways to connect with issues and concerns that they would like to make part of their legal career. So, ask questions and get involved.

My final thoughts:

As I continue to grow in my understanding of the law, one of my goals is to create access to legal representation to those that are unable to afford it or access it. Conducting this interview inspired me for the upcoming Spring semester. I was chosen as one of the two students to participate in the Immigration Clinic at Western New England University School of Law. The clinic in the spring will be an opportunity to realize that goal as I partner with Legal Aid to act as a resource for immigrants.

Immigration is an issue that is close to my heart because I am a child of immigrants. I also come from a community predominately made up of immigrants of Latino descent. I hope this interview has opened your eyes to the need of legal representation in the immigration field. I also hope it has encouraged you, the reader, to know that the faculty and the students on campus are actively pursuing justice in order to remedy this need.

PHI ALPHA DELTA LAW FRATERNITY: MIDDLETON CHAPTER



The Middleton Chapter of Phi Alpha Delta, International (P.A.D.) inducted new members from Western New England School of Law this past November. PAD offers students a legal community that facilitates networking and student associations.

Students of any year (1L, 2L, 3L or 4L) are welcome to join by reaching out to the Middleton Chapter Justice, Teremar Rodriguez or by joining at www.pad.org!



Puerto Rico: The Evolution of “Unincorporated Territory” Status and its Ramifications

by Tara Morrison, 2L

Recently, Professor Annette M. Martinez-Orabona, clinical professor of law at Inter-American University of Puerto Rico, and Director of the Caribbean Institute for Human Rights, delivered a presentation entitled: “(Un)natural Disasters and Human Rights: Hurricane María and the Politics of Disaster in Puerto Rico.” The talk highlighted the ways that the tragic and catastrophic impacts of the hurricane were exacerbated by the pre-existing economic situation in Puerto Rico, and the United States’ governments’ failure to adequately respond to the disaster. This essay attempts to explore how Puerto Rico has been maintained as a colony of the United States, and how the effects of this relationship have continued to grow direr in recent years with the U.S.’s imposition of a financial advisory board, and marked failure to provide meaningful aide after hurricane María.

In order to understand and fully appreciate Puerto Rico’s current economic

reality, political status, and legal structure, it is important to understand the colonial relationship that the United States has maintained with Puerto Rico throughout the past century. Beginning with its acquisition of Puerto Rico from the Spanish via the Treaty of Paris, continuing with a series of disturbing Supreme Court decisions referred to as the “Insular cases,” the Jones Act, and finally the institution of the Financial Advisory Board with the power to control legislative action in Puerto Rico, the United States government has been consistently guilty of capitalizing off of and controlling Puerto Rico. This article will begin by exploring how the history of Puerto Rico’s relationship with the United States has developed, and then will look at how this political reality has exacerbated the effects of Hurricane María. Despite hundreds of years of colonization, the people of Puerto Rico have resisted, organized, and navigated an oppressive political structure, an effort directly observable most recently

in response to the destruction rendered by the hurricane, as the U.S. has failed to provide adequate and meaningful aide to the island.

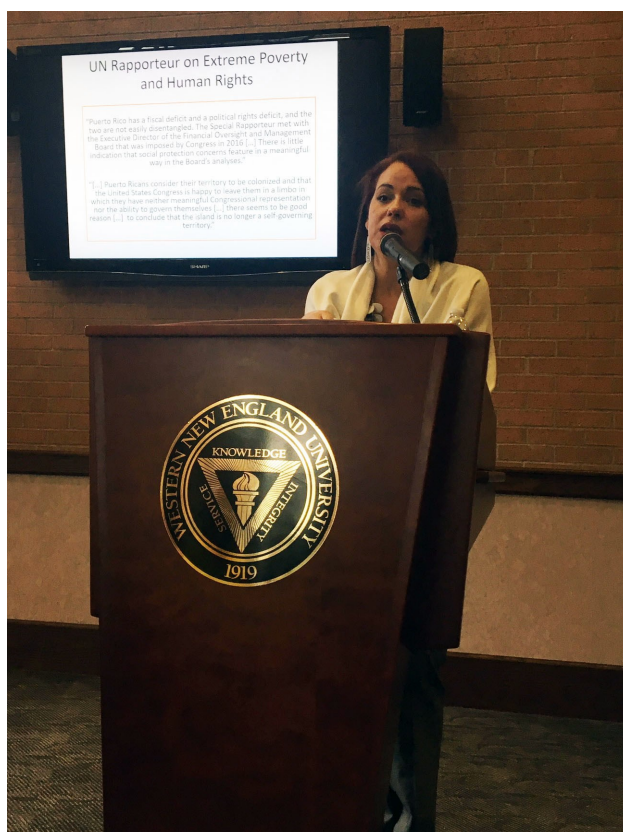
Spanish Rule and the Treaty of Paris

Before the United States acquired Puerto Rico in the Treaty of Paris, Puerto Rico had already been a Spanish Colony since the early 1800's. During this time free land was offered to Spanish migrants, with the goal of incentivizing immigration and colonization, and decreasing the strength of independence movements by bringing in more loyalists with strong sympathies to Spain. Despite these concerted efforts to prevent an independence movement, the Latin American Independence Wars, as well as a burgeoning democracy in the United States, in-

spired a movement to demand increased liberties in Puerto Rico. This, combined with poverty and political estrangement from Spain, lead to an independence uprising in the town of Lares. While this revolt was ultimately unsuccessful due to violent suppression, it marked a meaningful moment of resistance and declaration of the demand for political freedom.

By the end of the century, more movement was developing towards Puerto Rican autonomy. In 1897 Spain agreed to the Charters of Autonomy for Cuba and Puerto Rico, and Puerto Rico saw its first autonomous local government under the Spanish Empire, appointed by general election. The Spanish Governor still maintained a high level of control, as he had the power to annul any legislative

decision, but it was a step towards a more localized Puerto Rican government. Unfortunately, this lasted for only several months, before the Spanish American War resulted



Professor Annette M. Martinez-Orabona, clinical professor of law at Inter-American University of Puerto Rico, and Director of the Caribbean Institute for Human Rights.

in the transfer of Puerto Rico from Spanish to American rule. After Spain ceded Puerto Rico to the United States in the Treaty of Paris, Puerto Rico went into two years of military rule and occupation by the United States Government. The Treaty of Paris first established the concept that Puerto Rico was under the control and jurisdiction of the Federal Government by stating that “the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.” Despite the requirement that delegates from Puerto Rico be present for any negotiations that involve a change in the status of Puerto Rico, only Spanish and American delegates took part in this negotiation of the Treaty.

How the U.S. Maintained Puerto Rico as a Colony

During the early occupation of the United States in Puerto Rico, there was much debate about whether or not the United States could maintain

Puerto Rico as a colony. The validation for taking control of Puerto Rico rested in the implicit power of the President, under Article II of the United States Constitution, to take war possessions.¹ One of the main differences between Puerto Rico and other areas in North America that were taken by the United States was that there were not any U.S.



settlements in Puerto Rico. There was also a heavily racist narrative about the people of Puerto Rico, through which the United States Government validated a differential treatment of the island and came up with the concept of “unincorporated territories.”

The concept of an unincorporated territory was invented as a response to the question of whether or not Puerto Rico would be a state.

Before the unincorporated territory, either you were a state, or you were pre-statehood. Once the United States acquired control over Puerto Rico, the debate began as to whether Puerto Ricans would have United States citizenship, and whether Puerto Rico would become a state and be viewed as its own sovereign, with the authority

1. USCS Const. Art. II, § 2, Cl 2.

and powers that are vested in the state governments. The early Twentieth Century saw a number of cases and laws that determined the fate of Puerto Rico's relationship with the United States.

In 1900, after two years of military government, the Foraker Act granted Puerto Rico a certain amount of civilian popular government, establishing Puerto Rican citizenship to all born after 1899, an elected House of Representatives, a judicial system modeled off of the U.S. system, and a non-voting member of Congress. During this time period several cases, referred to as the "Insular cases," determined Puerto Rico's status, a status that remains the same as of today. In *De Lima v. Bidwell* the Supreme Court ruled that Puerto Rico was not a foreign country for purposes of the tariff law, and that the United States had rightfully acquired Puerto Rico by treaty (because the United States has the right to declare war and to make treaties, it also has the power to obtain territories via treaty).² This begs the question, if Puerto Rico is in fact a territory of the United States, then does the United States Constitution apply to Puerto Rico?

In *Downes v. Bidwell* the Supreme Court ruled that the United States Constitution does not operate by its own force in Puerto Rico, but must be extended by Congress.³ This means that the rights afforded to United States citizens under the Constitution are not extended to Puerto Ricans unless Congress declares it so. Such a doctrine, referred to as the "unincorporated territory doctrine," al-

lows the Congress of the United States to maintain complete unilateral control over the people and government of Puerto Rico, and establishes Puerto Rico's status as an unincorporated territory. While neither a state nor a pre-state, Puerto Ricans have no inherent Constitutional rights (only those directly extended by Acts of Congress), do not have representation in the House and Senate, and are not able to engage in Presidential elections while residing on the island.

The Insular cases established that Puerto Rico belongs to the United States, but is not a part of the United States. Puerto Rico is controlled by the United States, while not being afforded the rights meant to be guaranteed to its citizens under the Constitution. In 1917, the Jones Act made all Puerto Ricans collectively U.S. citizens but this was statutory citizenship; it did not affect the official status of Puerto Rico as a territory, and it also means that Congress, and not the United States Constitution, grants rights to the citizens of Puerto Rico. The Jones Act was signed only months before President Wilson signed a compulsory military service act, and nearly 20,000 Puerto Rican citizens were drafted to fight in World War I. This was the beginning of a long trajectory of Puerto Rican citizens disproportionately serving and dying in service to the United States military.

Ramifications of "Unincorporated Territory" Status

The fact that the Insular cases have

2. *De Lima v. Bidwell*, 182 U.S. 1, 21 S. Ct. 743 (1901).

3. *Downes v. Bidwell*, 182 U.S. 244 (1901).

failed to be overturned by the United States Supreme Court, and remain good law, has allowed the status of Puerto Rico as a possession of the United States to remain intact. It is impossible to quantify the effects that this status has had on the economy, government, identity, and development of Puerto Rico. For example, in 1920 the Merchant Maritime Act was passed, requiring all goods transported by water between U.S. ports be carried on U.S.-flag ships, constructed in the United States, owned by U.S. citizens, and crewed by U.S. citizens and U.S. permanent residents. This Act of Congress, a decision that Puerto Ricans had no input into due to Puerto Rico's status as an unincorporated territory, makes shipping goods to Puerto Rico unnecessarily expensive, as it insulates them from being exposed to the global market. Setting the price of goods and materials at a higher cost sets Puerto Rico at an economic disadvantage, one that the citizens and local government have no political authority to alter. The Merchant Marine act has had particularly devastating effect after Hurricane Maria, as it impedes shipments of food and materials from being delivered expediently to the island.

In 2005, former President George W. Bush appointed a task force to investigate the status of Puerto Rico, and the result of this investigation was the conclusion that Puerto Rico is still a territory. Because law designated citizenship, it can be reversed or modified at any time, without any input from the people of Puerto Rico. Subse-

quently, former President Barack Obama's task force concluded that Puerto Ricans do have some power, so citizenship cannot be reversed completely unilaterally. The United Nations has initiated a global de-colonization effort, one that the United States has remained basically unaccountable to in terms of Puerto Rico and its other unincorporated territories through these legal and political loopholes. Another example is the case of *Puerto Rico v. Sanchez Valle*, where the Supreme Court decided that Puerto Rico and the United States Federal government do not have separate dual sovereignty.⁴ Unlike the states, who derive their authority from separate sources under the federalist structure, Puerto Rico's sole source of authority remains the Federal government.

Perhaps the most disturbing ramification of Puerto Rico's continued status as an unincorporated territory is the situation of Puerto Rico's financial debt. Firstly, the causes and conditions that brought about such a debt cannot be separated from the history of control that the United States has exercised. The United States government has obstructed and controlled Puerto Rico in a myriad of ways, from having certain positive rights struck from the Constitution, to efforts by the FBI to inhibit political movement in the independence party. It remains impossible to say what kind of economic position Puerto Rico might have been in had there been freedom for political and developmental autonomy, but it is clear that

4. Puerto Rico v. Sánchez Valle, 136 S. Ct. 1863

whatever the current situation is in Puerto Rico, it is a result of direct U.S. control, and therefore deserving of accountability from the U.S. government.

In response to the large-scale debt, Puerto Rico sought remedy by enacting the Recovery Act. Unlike the states, Puerto Rico is not authorized to seek certain financial reliefs under the U.S. Bankruptcy Code, so an alternative option was necessary. However, in *Puerto Rico v. Franklin California Tax-Free Trust*, the Supreme Court held that although Chapter 9 of the U.S. Bankruptcy Code does not apply to Puerto Rico, the Recovery Act was nonetheless preempted by the U.S. Bankruptcy Code, which prohibits state municipal debt restructuring laws from binding creditors without their consent.⁵ This decision is a disturbing reflection of the dichotomy that runs throughout the history of Puerto Rico's relationship with the United States; that of being both controlled and excluded. The U.S. Bankruptcy Code was found to somehow simultaneously not include Puerto Rico in the part allowing relief, yet prohibits Puerto Rico from seeking other remedy. The ramifications of this decision are that Puerto Rico was left with no options through which to remedy its debt, unlike the sovereign states, and instead Congress enacted its own solution in the form of PROMESA. This Act allows a small group of people appointed by Congress to have enormous legislative power over any and all decisions that

affect the economy in Puerto Rico. By implementing austerity measures rather than allowing Puerto Rico to declare bankruptcy, they are further crippling the economy in Puerto Rico and stripping basic social necessities. The history of Puerto Rico's relationship with the United States is a complex one, but the thread that remains throughout is a lack of accountability from the United States, simultaneously maintaining control over its territory, while placing the onus of blame on Puerto Rico when things go wrong.



5. *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 136 S. Ct. 1938 (2016).

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