VOLUME XXX • NUMBER III • FALL 2018

The Politics of PROMESA

EDWIN MELÉNDEZ

ABSTRACT

This article provides an overview of PROMESA in the context of an erratic historical pattern of U.S. policy implementation toward Puerto Rico and offer an analysis of the congressional political and legislative dynamics that led to the enactment of the law. PROMESA's core components were and are contentious to various constituencies affected by the legislation, especially to those directly affected by severe austerity measures and bondholders who have lost substantial value in their investments. PROMESA received divided support from the Puerto Rican people and its elected officials when enacted and represents a new reality and challenge to the Puerto Rican people both on the island and stateside. [Key words: Key words: PROMESA, U.S. policy, debt crisis, austerity, economic development, federal funding]

The author (emele@hunter.cuny.edu) is a Professor of Urban Policy and Planning and the Director of the Center for Puerto Rican Studies at Hunter College, CUNY. In addition to numerous scientific papers and other publications, he is the author or editor of thirteen books including *State of Puerto Ricans* (Centro Press, 2017) and *Puerto Ricans at the Dawn of the New Millenium* (Centro Press, 2014). He also served as invited Editor for "Pathways to Economic Opportunity" *CENTRO Journal* 23(2), 2011.

Governor García-Padilla's declaration that Puerto Rico's public debt was "unpayable" and the subsequent first default in August of 2015 caused widespread media attention in the U.S. to the "Puerto Rico debt crisis" and triggered the unfolding of events that led to the enactment of the Puerto Rico Oversight, Management and Economic Stability Act ("PROMESA"). At the time, Puerto Rico's public debt was over $74 billion and public pension obligations $50 billion. However, for political and financial actors it was evident that Puerto Rico was at the verge of a financial collapse when its bonds were rated as "junk bonds" in 2014 and the only credit available to the Commonwealth was offered by hedge funds and other predatory lenders. The accumulation of debt was partly the result of a prolonged recession and the concomitant decline in tax revenues. However, the ruling political parties' inability to respond with effective economic development and fiscal policies to counter the phase out of Section 936 federal tax incentives and to other broader factors such as technological change and globalization affecting manufacturing more generally, and their inability to restructure government to conform to a new fiscal reality were (and are) critical factors inducing the economic crisis. The Puerto Rico "debt crisis" called for decisive congressional action.

Enacted as a rare bipartisan legislation of the 114th Congress, PROMESA was designed to steer negotiations with creditors and lead to the restructuring of the crushing debt and pension liabilities. PROMESA, despite its flaws, provides Puerto Rico with a legal pathway for debt restructuring and greater bankruptcy protection that is available to states through Chapter 9 of the U.S. Bankruptcy Code procedures and, so far, has saved billions of dollars in payments to creditors that would have resulted in heighten austerity. PROMESA's steep cost for Puerto Rico was the imposition of a seven-member Financial Oversight and Management Board (Oversight Board) to oversee Puerto Rico's finances. The Oversight Board is comprised of seven members appointed by the U.S. President and has the authority to supersede local law in matters that affect the Commonwealth's budget and compliance with an approved fiscal plan. The Oversight Board also has the mandate to restructure the public debt, oversee the development of a long-term fiscal plan, and approve balanced budgets consistent with the approved plan. Its multimillion-dollar annual budget is paid for by the Commonwealth it oversees. In many ways, the Oversight Board resembles the authority extended to the Executive Council under the Foraker Act of 1900 where the power resided in an appointed body. Yet, the first control group under the Foraker Act was fully integrated by Puerto Ricans; PROMESA only mandates that one appointee to the Oversight Board "maintain a primary residence in the territory or have a primary place of business in the territory."

Though PROMESA was the only politically feasible policy option at the time it was enacted, there are significant tradeoffs and contradictions embedded in PROMESA that may render it insufficient as a policy framework to achieve its main goal of stabilizing Puerto Rico's economy yet exact the steep price of setting back a century of U.S.-Puerto Rico political relations. As a bipartisan legislation, especially in the context of presidential and congressional deep-rooted policy differences and the presidential electoral cycle heating up at the time, a broad coalition of Democrats and Republicans was needed to pass the legislation both in the House and the Senate. With support from the overwhelming majority of progressive Democrats, PROMESA allowed for the restructuring of the public debt inclusive of the general obligation bonds from the commonwealth, a bankruptcy procedure that exceeds what is available to states. In addition, PROMESA allowed for a stay on repayment of the debt that saved the Commonwealth and its dependencies billions of dollars in repayment of the debt since its enactment.

Yet, upon conditions imposed by the Republican majority, PROMESA installed an Oversight Board to control the island's finances by giving it authority over the budget. But as many critics have pointed out, PROMESA did not allocate federal resources to stabilize the island's economy, deal with the impending health crisis, or provide a clear mechanism for developing a comprehensive plan for job creation and economic development. The shortcomings of PROMESA are in many ways superseded by the injection of post-Hurricane Maria federal funding supporting Medicaid temporarily as well as mitigation of infrastructure and economic recovery. This funding is managed by FEMA and other federal agencies and by the Commonwealth government though the Oversight Board oversees expenses to the extent that they affect the budget.

Puerto Rico's current fiscal and political situation is as much the result of the U.S. oversight or lack thereof as it is of local political dynamics especially as it concerns mismanagement of public finances.

In this article, I provide an overview of PROMESA in the context of an erratic historical pattern of U.S. policy implementation toward Puerto Rico and offer an analysis of the congressional political and legislative dynamics that led to the enactment of the law. Puerto Rico's current fiscal and political situation is as much the result of the U.S. oversight or lack thereof as it is of local political dynamics especially as it concerns mismanagement of public finances. PROMESA represents a turning point in Puerto Rico's political and economic history. The focus of this study is the process and outcome of policy making and negotiations that led to PROMESA—the post- Hurricane Maria period is addressed here only tangentially, as are the contentious budget negotiations between the Oversight Board and Governor Rossello's administration. PROMESA's core components were and are contentious to various constituencies affected by the legislation, especially to those directly affected by severe austerity measures and bondholders who have lost substantial value in their investments. PROMESA received divided support from the Puerto Rican people and its elected officials when enacted and represents a new reality and challenge to the Puerto Rican people both on the island and stateside.

U.S. Economic Policies Toward Puerto Rico

Over time, congressional policies have provided the foundation for Puerto Rico's economy. These policies have been inconsistent, at times beneficial and at other times harmful to economic development. Puerto Rico's ability to issues triple tax-exempt bonds was granted by the Jones-Shafroth Act of 1917. Making Puerto Rico bonds earnings exempt from federal and local taxes made them very attractive to investors in municipal capital markets. Similarly, the Revenue Act of 1921 exempted corporations from taxation of all income from U.S. possessions though income was taxable on repatriation. These federal tax incentives provided needed capital for the development of infrastructure through the development of public corporations and induced industrial development in Puerto Rico through the expansion of operations of American corporations. In essence, this was Puerto Rico's postwar development model, and its foundation included access to municipal capital markets for the development of public infrastructure to support multinational corporations' investments in manufacturing and other export-oriented industries(Ayala and Bernabe 2009; Dietz 1987; Rivera Batiz and Santiago 1996).

However, business cycles and globalization have induced changes in policies that are intended to respond to the challenges facing the U.S. economy but have contradictory impacts on the island. By the 1970s the island economy relied on processing oil imports from Arab countries and then shipping them to the U.S. When the Organization of Petroleum Exporting Countries (OPEC) imposed an embargo against the United States after President Nixon decided to support Israel during the 1973 Arab-Israeli War, the oil refinery industry collapsed and with it Puerto Rico's economy went into a recession (Dietz 1982). In 1976, Section 936 of the Internal Revenue Code was created to support the island's economic recovery by exempting American companies from federal taxes on repatriated income earned in Puerto Rico (Feliciano 2018). Section 936 worked for its intended purpose. By the early 1990s, pharmaceutical and high-tech manufacturing had become the undisputable economic anchors of the island's economy. But the companies favored by Section 936 were reaping billions of dollars in profits exempted from federal taxes. A pro-statehood administration in Puerto Rico generally perceived the federal tax exemption as an impediment to statehood and a change in status (Luxner 1996). President Clinton, who had tried for years to close a perceived tax loophole, finally found token opposition from the governing party to the elimination of Section 936 and a direct source of tax revenues to support legislation favoring U.S. small businesses.

As part of the Small Business Job Protection Act of 1996, Congress approved a 10-year phase-out of Section 936 tax credit. Presumably, closing the loophole would have provided funding for business development in the United States. But in reality, multinational corporations repatriate only a small fraction, less than a quarter of their profits. Puerto Rico lost new investments in these industries, deposits were withdrawn from local banks, and Puerto Rico's economy entered into a steady decline. The program ended completely in December 2005. Though the elimination of Section 936 was not the only factor inducing the downfall of manufacturing in Puerto Rico, as globalization and technological change induced a general decline of manufacturing stateside (Feliciano 2018), Puerto Rico's most recent economic crisis began shortly after. Acrimonious local politics prevented the development of a cohesive alternative economic development strategy to counter the loss of federal tax incentives and other factors eroding Puerto Rico's industrial base, and by the end of 2007 the Great Recession further pushed the economy into a protracted recession.

President Barack Obama's stimulus policies benefitted Puerto Rico in two specific ways. First was a package of $7 billion (spent from 2009 to 2013) to inject capital to the local economy through the American Recovery and Reinvestment Act of 2009 (ARRA). These funds were disbursed primarily to cover operating expenses and a relatively small portion went to cover infrastructure investments that would have had a more direct impact on job creation or on retention (Transition Report 2013). In addition, beginning in January of 2011, the Commonwealth enacted Act 154 of 2010, which established a 4 percent Excise Tax on services transactions to foreign corporations that produced about $2 billion annually accounting for over one-fifth of the tax revenues collected by the central government. In turn, foreign corporations claimed a credit on their federal taxes for the Puerto Rico tax. Reuters referred to this arrangement as "backdoor bailout" of Puerto Rico (Bond News 2014). This arrangement became the target of the Oversight Board, which conveyed to Governor Rossello that "both the government's budget as well as any economic plan must not take into consideration the revenues generated under Act 154-2010" (Tax Alert 2017).

However, President Trump's new Tax and Jobs Act of 2017 solved Puerto Rico's government 4 percent Excise Tax conundrum. Under the new tax structure, the Global Intangible Low-Taxed Income (GILTI), the minimum tax for any U.S.-owned controlled foreign corporations (CFC) is 10.5 percent. So, CFCs would be charged an additional 6.5 percent to the local excise tax but the local tax will remain as a deductible from federal taxes (Feliciano 2018). Despite this advantage, CFCs investments in Puerto Rico are affected by both the increase in local taxes and by the lower taxation rate stateside. The net effect of the recent federal tax reform will unfold over the next few years as CFCs adjust their investment strategies to these changes. The fiscal plan approved by the Oversight Board contemplated a steady decline of this revenue source.

To this day no one has provided a consistent and credible explanation as to why Puerto Rico's exclusion [Section 903(1) of the Bankruptcy Code] was enacted as part of the law.

Borrowing through triple-tax-exempted municipal bonds in capital markets became a key element of the post-war economic development. Public borrowing made feasible the development of many public corporations that provided the country with electrical, water, roads, communications, public buildings, and all types of economic infrastructure. But when the post Section 936 recession and the impact of the financial collapse in the U.S. took a toll and many of these public corporations could not service debt payments and maintain operations, Puerto Rico could not declare bankruptcy to protect public corporations from creditors. The U.S. inattention to its territory connects directly to the debt crisis. In 1984, Congress adopted Section 903(1) of the Bankruptcy Code and introduced a new definition of "State" that excluded Puerto Rico's municipalities from legal recourse to municipal bankruptcy. To this day no one has provided a consistent and credible explanation as to why Puerto Rico's exclusion was enacted as part of the law. Even with the inclusion of Puerto Rico in the Bankruptcy Code, the general obligations of the Commonwealth would not have been covered under federal court procedures. In that sense, PROMESA bankruptcy provisions are more comprehensive and beneficial to Puerto Rico. Yet, exclusion of Puerto Rico from declaring bankruptcy led directly to the need for and the enactment of PROMESA.

With Puerto Rico crippled by public debt and pension obligations, Congress had to act to provide a legal mechanism to restructure the island's debt. PROMESA established the Oversight Board to oversee Puerto Rico's finances and budgets and provides for a court-supervised debt restructuring. PROMESA also provided for a stay in debt service of almost a year to allow the Oversight Board to examine options and possibly negotiate with creditors. For many, PROMESA offered a way out of the debt crisis and the promise of economic prosperity. But PROMESA generated a strong populist opposition from the very beginning. Over time, massive demonstrations against the policies of the Oversight Board and the populist approach of Governor Rosselló led to less favorable public opinion of PROMESA. In the future, public opinion is bound to be influenced by how the Oversight Board supports economic development, mitigate austerity and leads to the disposition of the debt. Their credibility is also tied to their audit of the debt and accountability toward financial institutions and public officials entangle in the fiscal crises and unrestrained indebtedness.

The Genesis of PROMESA

Governor García-Padilla's declaration that Puerto Rico's public debt was "unpayable" triggered the intensification of a public debate regarding options for solving the debt crisis. Though various alternatives entered the public debate about how to resolve Puerto Rico's debt crisis, PROMESA proved to be the only politically feasible policy option for the U.S. Congress and President Obama's administration. One of the first options brought to the forefront around that time was using the U.S. Treasury's Exchange Stabilization Fund (ESF) to support a restructuring of Puerto Rico's debt. Some analysts contended that the U.S. Treasury was offering advice but not considering other options that could provide debt relief. Considering that the Government Development Bank of Puerto Rico, which carried out debt-management functions similar to State Treasurers, did not have access to the fed's discount window, Puerto

Rico was at a disadvantage compared to other U.S. states and municipalities and thus justified the U.S. Treasury's consideration of other options to boost liquidity.

The U.S. Treasury's Exchange Stabilization Fund is generally seen as a policy tool used to stabilize foreign currency and, some argued, it could have been used to support Puerto Rico's restructuring of the debt. However, financial policy analysts contended that the "combination of the just-adopted 2016 Budget Resolution by Congress barring bailouts to municipalities—but not other corporations—combined with steps taken by Congress to limit Executive authority in the wake of the financial crisis of 2008, such as barring use of the Exchange Stabilization Fund, which had been used to help Mexico during the 1990s, for emergency purposes—have served to handcuff the Executive branch—even as the financial/fiscal crisis has worsened" (Puerto Rico & Federal Fiscal Policy Insolvency 2015). A year after it was first proposed, the Exchange Stabilization Fund was incorporated in a legislative proposal put forth by Senator Bernie Sanders during his presidential campaign. By all counts, ESF would not have been a viable mechanism for debt restructuring. In the case of Mexico, ESF was used as a bridge loan for liquidity purpose to a solvent government that could guarantee the repayment of the loan. In addition, whether or not statutorily available, the ESF would have lacked the cram-down provisions of Title III of PROMESA that are essential to force agreement with creditors and avoid protracted legal procedures with hedge funds and other hold-outs creditors.

A second policy option proposed at the time by various policy analysts and activists involved action by the Federal Reserve Bank. In theory, the fed had several options to intervene such as providing loans to public corporations to restructure debt, or by buying new bonds from the Commonwealth used in a Reverse Dutch Auction Process. However, the Federal Reserve Bank typically lend to commercial banks not to states or public corporations. In addition, the rationality for this intervention would have been partially based on a notion that Puerto Rico's default was a threat to the broader U.S. financial system, a standard of high order. Since the case of Puerto Rico was not perceived to be of that magnitude by policymakers, say comparable to the financial crisis of 2008, the Federal Reserve option was dismissed by Chairwoman Janet Yellen.

At the end, with proposed policy options not gaining traction with elected and other government officials, the most feasible policy pathway for restructuring Puerto Rico's debt was through congressional action. The administration, led by President Obama and Secretary Lew, proposed debt relief by extending bankruptcy procedures to the commonwealth and mitigating the impact of the crisis by maintaining funding for health programs, expanding the Child Tax Credit (CTC) and adding the Earned Income Tax Credit (EITC). In addition, Secretary of Health and Human Services Sylvia Mathews Burwell was examining options under current law through administrative regulations or executive orders to improve access to health services in Puerto Rico.

The decisive factor for the enactment of PROMESA was that the Republican congressional leadership needed democratic votes to pass a spending bill (Snell and Demirjian 2015). Puerto Rico's debt became one of the democratic leadership's demands to Speaker Paul D. Ryan (R-WI) for their support to the bill. According to House Minority Leader Nancy Pelosi (D-Calif.), Speaker Ryan "wanted to go through committee on it" and promised that "[f]irst day back [Ryan] said there would be hearings on the crisis in Puerto Rico" (Snell and Demirjian 2015). But the context for these negotiations is also important. Governor García-Padilla's declaration that the public debt was "unpayable," in addition to calling widespread attention to the depth of the ongoing recession in Puerto Rico and the scale of its financial problems, also prompted a diaspora solidarity movement with Puerto Rico. Although elected officials in Puerto Rico were actively lobbying Congress and Resident Commissioner Pedro Pierluisi had introduced and spearheaded legislation, nationwide direct action in the districts of members of congress and others advocating for Puerto Rico was a significant new phenomenon in Puerto Rican politics. Spearheaded by the leadership of Nydia Velázquez (D-NY) and José Serrano (D-NY), Leader Pelosi and Speaker Ryan were aware of the importance of the Puerto Rico issue in the upcoming presidential elections in swing states such as Florida and Pennsylvania.

The political links between Puerto Rico and the diaspora go back to the revolutionary movement of the late nineteenth century when Puerto Rican patriots saw New York as a platform to advocate for an end to Spanish colonialism in the island (Meléndez 1998). Since then, the Puerto Rican political movements have revolved around the quests for independence, greater autonomy, or annexation to the United States. The significant difference in recent years is that as a result of the millennial migration the majority of Puerto Ricans, about six of every ten now reside stateside, and of those the overwhelming majority are U.S. born, over 70 percent of them, and native English speakers (Meléndez and Vargas-Ramos 2014). While in the past political action was largely constrained to the greater New York City region, the population boom has induced significant growth of the stateside Puerto Rican community across the country. Migration is especially significant in Florida, where the political affiliation of Puerto Ricans is roughly divided between Democrats and Republicans, with a sizable share of independents, and where a significant portion of the electorate has manifested sympathy for statehood (Survey of the Puerto Rican Florida Electorate 2016). These population changes gave those advocating for congressional action a more robust presence among elected officials in both parties across the country.

The first organized effort to ascertain an articulated voice on the Puerto Rican crisis was the conference Encuentro Nacional de la Diáspora Puertorriqueña in Orlando, Florida, in October 2015 (Delgado 2015a). The summit was organized by a broad coalition of community leaders and elected officials with the stated purpose of "building a national Puerto Rican agenda." Among the over 300 participants from ten states in the conference, close to twenty national and regional Puerto Rican organizations were represented by their leaders, and close to twenty elected officials, including four members of Congress, participated. The discussions centered on the impact and effects of the economic crisis in Puerto Rico on the stateside Puerto Rican community. Besides the debt and fiscal crises, topics included the Medicaid "cliff," civic engagement, climate change, and others. Perhaps the most important outcome was the call for a national coalition and a caucus of elected officials to give continuity to the agenda and solidarity initiative.

In alliance with the Hispanic Federation of New York, Puerto Rican organizations and leaders organized the Day at the Capitol on December 2, 2015. Coalition leaders agreed to focus on the issues of extending bankruptcy to Puerto Rico, parity in health care and Child Tax Credit (CTC) programs, and the extension of the EITC to the island (Delgado 2015b). Their goal was to add these Puerto Rico-focused legislative initiatives to the Omnibus Spending Bill that was due by mid-December. With over a thousand volunteers in hand, over forty information sessions were organized with members of Congress, all of them mediated and attended by voters in their districts. Many other members of Congress were called from a telephone bank in a nearby hotel that accommodated the overflow of participants—the members of Congress offices were not large enough to accommodate all that wanted to participate nor were they able to get appointments. The end result, a clear victory for the initiative, was a commitment from Speaker Paul Ryan (R-Wis.) to take up Puerto Rico legislation by the end of March (Fuller and Barrón-López 2015). The statement about Puerto Rico was critical to persuade a significant number of Democrats to get behind the bill.

At the end, the solidarity movement was instrumental for mobilizing democratic support for a legal option for "territorial" debt restructuring and the democratic leadership in turn was able to use the vote on the spending bill to exact Speaker Ryan's commitment to a legislative process to deal with the debt crisis in Puerto Rico.

Political pressure from a broad coalition of Puerto Rican leaders from the diaspora continued. In a follow-up day of action at the capitol, led by actor Lin Manuel Miranda and congressional leaders, they pressed for the extension of bankruptcy to Puerto Rico (Escobar and Alfaro 2016). At the end, the solidarity movement was instrumental for mobilizing democratic support for a legal option for "territorial" debt restructuring and the democratic leadership in turn was able to use the vote on the spending bill to exact Speaker Ryan's commitment to a legislative process to deal with the debt crisis in Puerto Rico. Political negotiations led Speaker Ryan to ask Rep. Rob Bishop (R-Utah), Chairman of the House Natural Resources Committee, to initiate legislative procedures to consider bankruptcy for Puerto Rico. This was the genesis of what would become PROMESA.

The Enactment of PROMESA

One of the most intriguing aspects of enacting legislation were the coalitions for and against PROMESA—strange bedfellows, for sure. And, to no one's surprise, the situation of Puerto Rico got entangled in presidential politics. On the one hand, the bipartisan coalition in favor of the legislation coalesced around President Obama, Secretary Clinton, and Speaker Ryan. The opposition to the legislation was led by bondholders (no surprise) and a coalition of unions fearful of the impact of the bill on pensions advocating for protections for public retirees. Despite a majority of Republicans supporting the bill and securing the so-called "Hastert Rule" threshold, PROMESA could not have passed without Democratic support, which gave Leader Pelosi some bargaining power to shape PROMESA.

In addition to Leader Pelosi, the Obama-Ryan Coalition supporting the bill included Rep. Pierluisi and the Democratic leadership in Congress. But why were some Republicans supporting the bill? In essence, both sides realized the dire consequences of doing nothing. For the most part, Democrats saw PROMESA as the only immediate, viable alternative to gain a stay on payment of obligations in the immediate future when almost $2 billion were due July 1, 2016. And though this would not have been the first time that Puerto Rico defaulted on debt service payments, this time bondholders, led by hedge funds holding general obligation bonds, would have ensue more aggressive legal challenges and in all likelihood more severe austerity. President Obama, Treasury Secretary Jacob Lew, and others in the administration continued advocating for a legal remedy to the situation, while the diaspora solidarity movement continued highlighting Puerto Rico's situation during presidential elections.

Not all Democrats supported PROMESA. Most prominently, Senator Bernie Sanders (I-VT) running for the Democratic presidential nomination at the time squarely sided with the unions. He stated that the law did not protect pension funds, proposed a potential lowering of the minimum wage, and the authority of the control board over local government went too far. Sympathizers of this position argued that it was better to wait for a new administration to take office than to take a bad deal like PROMESA. They argued that, though a chaotic situation would surely develop in Puerto Rico after July 1, such a chaos would just put more pressure on Congress to act in favor of Puerto Rico. For context, there was the expectation among Liberals that a Donald Trump candidacy would result in a windfall for Democrats that could result in a Democratic control of Congress. However, political analysts such as David Daley argued that "redistricting post-2010 was built to withstand even a landslide loss" and such a scenario [a Democratic control of the House] was just a "fantasy."

So, a reasonable expectation at the time was that the House would be controlled by the GOP in the next Congress. This would have put bankruptcy legislation squarely back where it started—hoping for a bipartisan bill to address the fiscal crisis in Puerto Rico. However, pursuing a wait-and-hope-for-the-best strategy would have carried an enormous cost in terms of the likely legal chaos and concomitant heighten austerity in the island. In addition, part of the problem that Puerto Rico would have faced if PROMESA was not enacted was the same—finding an alternative politically feasible policy option that offered a realistic path toward restructuring of the debt. In retrospect, that option would have had a more difficult path with the election of President Trump.

Senator Sanders also proposed that "Congress should act immediately to give Puerto Rico the same authority granted to every municipality in this country to restructure its debt under the supervision of a bankruptcy court. But the Republicans in Congress continue to oppose this" (Sanders 2016). Senator Sanders was referring to extending Chapter 9, which regulates municipal bankruptcy, to Puerto Rico. Bankruptcy procedures in Detroit are an example of the implementation of this procedure. Senator Sanders' proposal was similar to Rep. Pierluisi's bill proposing to "Include Puerto Rico in Chapter 9 of the U.S. Bankruptcy Code." However, the Chapter 9 bankruptcy route for the Puerto Rico case confronted two problems. The first was that it would have been an incomplete solution to the debt problem. Chapter 9 would have excluded the Commonwealth debt, especially General Obligations bonds accounting for $12.5 billion, the second largest share of the debt. Hedge funds controlled a substantive portion of this debt and would have aggressively pursue legal remedies when the Commonwealth defaulted on upcoming payments in July. In addition, Chapter 9 procedures would have excluded another significant portion of the debt as COFINA (from the Spanish name Corporación del Fondo de Interés Apremiante) bonds, accounting for the largest share (over $17 billion) of the public debt, had enough cash flow to meet its repayment obligations and, therefore, it was not insolvent by Chapter 9 standards. In short, Chapter 9 standards would have required any Puerto Rican instrumentality to prove insolvency.

Besides the fact that Chapter 9 would have excluded general obligation and COFINA bonds, accounting for 42 percent of the total outstanding public debt at the time (excluding pension obligations), a second obstacle was that it confronted legislative hurdles in terms of having to go through various congressional committees. This is the main reason that Speaker Ryan chose to cast the Puerto Rico debt restructuring solely through the House Committee on Natural Resources, which has jurisdiction over the territories. After the markup of the revised bill, PROMESA went from the Natural Resources Committee directly to the House floor for a vote. Since the December 2, 2015, Day of Action at the Capitol the diaspora advocacy community in solidarity with Puerto Rico referred to "territorial" bankruptcy to differentiate it from Chapter 9. The strategy of channeling the legislative process through the Natural Resources Committee had the additional advantage of restricting any legislation to the "territories," thus excluding all states from legislation and, by implication, silencing the critics that raised the concern that any such legislation would establish a precedent for states with mounting debt obligations. PROMESA, with all its flaws, is inclusive of all debt, inclusive of general obligations bonds and incorporated Chapter 9-like bankruptcy procedures in federal court.

Despite attacks from the left, the most adamant opposition to PROMESA came, as to be expected given billions of dollars at stake, from the hedge funds and other bondholders. The bondholders rejected the implicit loss of value in a debt-restructuring process. They also differed in the interpretation of the way PROMESA treats pension funds obligations claiming that the law was "paving the way for the board to prioritize the Puerto Rican Government's pension liabilities over any and all classes of bondholders, including those with absolute constitutional priority" (Main Street Bondholders 2016). The issue of pensions clearly divided the opposition to PROMESA. Senator Sanders and the unions believed PROMESA would not provide protection to pensions. Hedge funds bondholders' campaign was orchestrated by the "Council for Citizens Against Government Waste" (CCAGW) that ran radio ads casting PROMESA as a bailout—a bailout with bondholders' money, to be precise. The Republican leadership framed PROMESA as necessary to avoid the use of public monies to rescue Puerto Rico. In their view, there was no alternative legislative option to provide federal funding to tackle the Puerto Rico debt crisis. Creditors took the risk when they invested in Puerto Rico financial instruments and bondholders would have to deal with the consequences as any other investor would. Despite the saturation of local markets targeting the Republican leadership in Congress, Speaker Ryan and Chairman Bishop harnessed most Republicans to support the bill.

The Commonwealth had a severe liquidity problem at the time PROMESA was enacted. For more than a year, the government had instituted emergency measures to generate operating capital such as "claw back" monies already distributed to government agencies, withhold payments to escrow accounts for payment of bonds debt, delaying income tax refunds and denying payments to pension funds. Since credit was not available and a Republican-controlled Congress was adamantly opposed to any injection of resources to mitigate the liquidity situation, schools, hospitals, and other essential services were already severely affected.

At the time PROMESA was enacted, the fiscal crisis had already evolved into severe austerity and an ensuing humanitarian crisis. For example, the budget of the island's only children's hospital had been cut by 14 percent, lacked CT and MRI machines, and has 70 vacant nursing positions; security guards for the public school system have gone unpaid for months; a town on the west coast was without its water supply for several days after a valve broke since the contractor would not fix the break due to lack of payment on prior bills; and the food supply for nearly 12,500 inmates in Puerto Rico's 37 prisons was almost interrupted after the prison system's food vendor stopped sending supplies because they were owed more than $12 million.

Under Title IV, PROMESA also provided a stay on legal action and debt repayment.

The price that Democrats paid for the stay on the debt services to provide a window for orderly negotiations with the bondholder and the restructuring of the public debt was the imposition of the Oversight Board. At first glance, PROMESA's Oversight Board appears to be a hybrid of two different models—the Oversight Board imposed by Congress to Washington, D.C., and the general bankruptcy procedure under Chapter 9 followed in Detroit. Though these models are a good approximation, there are some differences that go beyond a simple combination of these two models. The most important difference is that the Oversight Board will authorize a court procedure only after a period for voluntary negotiation would be exhausted and provided a mechanism to deal with potential holdback creditors. Under Title IV, PROMESA also provided a stay on legal action and debt repayment. At the conclusion of this period short of a year after the enactment of the Act, the Oversight Board could only initiate Title III for a court debt restructuring procedure with a super majority of five of seven members. In May 3, 2017, the Oversight Board voted unanimously to proceed with Title III and filed the case in federal court on behalf of the Commonwealth.

During the political deliberations that led to the enactment of PROMESA, several models were discussed. As in the case of DC, the Oversight Board is mandated to oversee a process that will produce balanced budgets consistent with restoring fiscal solvency. In DC the board oversaw fiscal management with far more powers to what they have in Puerto Rico but did not oversee debt restructuring. In 1997, Congress enacted the National Capital Revitalization and Self-Government Improvement Act (known as "The Revitalization Act"). The Revitalization Act provided debt and pension liability relief, ended Medicaid disparities and provided additional funding for infrastructure and economic development (Bouker 2016). But Congress also gave the Oversight Board emergency powers and authority over budget allocations and management decisions. In the case of Detroit, bankruptcy procedures respected the city's charter that gave more security to public pensions than to bondholders—which is a clear difference from the constitutional priority that was given to general obligation bonds in Puerto Rico. As it had been the case in multiple prior occasions of municipal bankruptcy, Michigan's governor appointed an emergency manager to oversee the city's finances during the bankruptcy procedures. After three consecutive balanced budgets, the state's financial oversight of Detroit's annual budgets ended in 2018, though the state-created commission "will continue to monitor Detroit's fiscal health for the next 10 years and could resume oversight if a budget deficit occurs" (Williams 2018).

In the case of Puerto Rico, one important common element with the cases of D.C. and Detroit was the issue of public employees' pensions, which at the time liabilities were closed to $50 billion. In the case of DC federal relief included pension liability relief, and in the case of Detroit pensions had statutory protection given it repayment priority over bondholders' debt. In contrast, Puerto Rico's constitution gives legal priority to bondholders over all other liabilities including pensions. Protecting public employees' pensions was the core issue for unions. PROMESA by superseding local law (including the Commonwealth's Constitution) and stating that pensions "must be adequately funded" in the fiscal plan, opened the door for pensions to be consider by the federal court proceedings on an equal footing with bondholders' debt.

Another case study that surfaced at the time was the Emergency Financial Control Board created in September 1975 to deal with New York City's $3.3 billion of debt and near bankruptcy crisis. State control of the city's finances for all practical purposes ended a decade later. However, despite the parallels with respect to the financial oversight board, a federal bailout of the city with $1.65 billion in long-term, federally guaranteed bonds represents a significance difference with the Puerto Rico case. Unlike the D.C. and New York cases, a federal bailout in any form or shape of Puerto Rico was not a politically feasible pathway. Furthermore, in contrast to D.C. and New York, in the Puerto Rico case the legislation has a clear sunset based on meeting financial targets—a sequence of balanced budgets and restoration of access to capital markets. Finally, the Oversight Board has no operational authority over the Commonwealth, only authority over the overall budget level and revenue sources to meet obligations based on the approved Fiscal Plan.

At the core of the controversy surrounding the PROMESA legislation were different interpretations of what would happen if Congress failed to approve PROMESA. The most obvious consequence was imminent legal chaos. As subsequent events showed, despite the PROMESA stay on debt service, hedge funds and other general obligation bondholders filed litigation against the Commonwealth for missed payments on the debt. General obligation bondholders contended that funds earmarked of tax revenues for COFINA bonds should be subordinated to general obligation bonds given their constitutional protections. At the time, the circuit federal court decided against them because of the stay until May 1, 2017. In the absence of the stay, the court would have had to decide the controversy between general obligation and COFINA bondholders, and they would have had to do so without a bankruptcy legal framework in the absence of PROMESA. Eventually the case went to federal Judge Taylor Swain as part of the Title III bankruptcy proceedings who, by the end of 2018, cleared the way for COFINA bondholders to vote on an agreement reached with the government and supported by the Oversight Board. The agreement restructures all $17.6 billion of COFINA debt representing 24 percent of Puerto Rico's total bonded debt (Bradford 2018).

Besides the wave of cases filed May 2, 2017, after the expiration of the stay and prior to the Oversight Board filing for Title III proceedings on May 3, another example of what would had been likely to happen when the Commonwealth missed payments to creditors in the absence of PROMESA was the case of the so-called health centers labeled 330 in reference to federally qualified health centers receiving grants under Section 330 of the Public Health Service Act. These health centers are mostly non-profit organizations that serve underserved populations. When the Commonwealth did not pay for special services for children with disability, federal judge Gustavo A. Gelpí ordered an injunction and placed the agency under a court-appointed receivership to insure payments. As this case illustrates, given the absence of a legal mechanism to enforce a restructuring of the debt, all that could be accomplished by a court procedure prior to the enactment of PROMESA, whether local or federal, would have been to enforce the contracts that defined specific financial obligations of the Commonwealth. The only clear outcome of the process would have been that the courts could only enforce existing laws and contractual obligations including payment of debt services, giving legal preference to senior general obligation bonds. Under such scenario austerity in all public services would have been more severe, and more likely to become a chaotic and arbitrary process, than those currently imposed by the Oversight Board.

In the end, the coalition led by President Obama and Speaker Ryan was able to pass self-standing legislation that satisfied the core concerns of progressive democrats that advocated for an orderly, legal mechanism to restructure the Puerto Rico debt and the core concerns of republican conservatives who advocated for tight financial controls through the Oversight Board and no federal "bail-out." The debate in Puerto Rico was as politically divided as it was in Congress. While public opinion was generally favorable to the enactment of both core elements of the legislation, the candidates of the two main political parties were divided—New Progressive Party (PNP from Spanish Partido Nuevo Progresista) candidate Ricardo Rossello aligned with the conservative position about the causes of the problem (local mismanagement) and thus supported the Oversight Board but not the debt restructuring mechanism, while Secretary of State and Popular Democratic Party (PPD, from Spanish Partido Popular Democratico) candidate David Bernier favored the progressive approach to debt restructuring but rejected the political implications of the Oversight Board.

Hope and Resistance in Puerto Rico

Prior to the enactment of PROMESA, though it was not clear what the Oversight Board really would mean for Puerto Rico, there was general support for the idea of an outside entity regulating the Commonwealth finances. In a poll conducted by a local university shortly before the enactment of the law, a majority of respondents (79%) expressed support for the Oversight Board. This support was highly correlated to support to and trust of federal institutions in Puerto Rico, such as the FBI (84% favorable) and the Supreme Court (81%). In the same opinion poll, respondents asserted distrust of Puerto Rico Political leaders: 95 percent agreed Puerto Rico was governed by a few groups that sought their own benefit. The principal investigator of the study, Professor Carlos Javier Sánchez from Universidad del Turabo, concluded that the public perceives the control board as a tool to restore sound fiscal management (Desconfían los boricuas en sus instituciones 2016). In other words, public opinion expectations prior to the passage of PROMESA were more associated with the deterioration of trust on the local political leadership to solve a problem than with the opinion of local political leaders opposing PROMESA. On this matter, public opinion in Puerto Rico shared a similar view to Republican members of Congress that demanded the imposition of the Oversight Board in the legislation.

Protests and resistance to austerity has influenced political dynamics since the beginning of the economic crisis. In 2009, massive demonstrations led by public employees came when Governor Luis Fortuño proposed Public Law 7, which declared a State of Fiscal Emergency and instituted fiscal stabilization reforms with wide impact on public employees. Thousands of government employees were laid off, causing many protests against these measures. During Governor García-Padilla's administration, on November 5, 2015, different social groups led by a coalition of all the religious denominations participated in "Unidos por la Salud," a rally that urged U.S. Congress to support equal treatment for Puerto Rico and prevent cuts in programs such as Medicare and Medicaid.

Immediately after the enactment of PROMESA, unions and other local leaders led protests including civil disobedience. For example, a group of protesters opened a camp in front of the federal court building in San Juan about a month after the enactment of PROMESA and a few weeks prior to the general elections in November. The same week, a group of protesters disrupted a Conference on PROMESA at the Hotel Condado Plaza. After a few hours of disruptions and confrontations the conference was suspended. Subsequently, in May 1, 2017, a broad coalition of unions, political leaders, and students' organizations participated in a march against austerity measures recommended by the Oversight Board, and in favor of an audit of Puerto Rico's public debt. Groups from the diaspora supported the cause by doing the same in New York.

Only three weeks prior to the elections, a poll conducted by El Nuevo Dia*, the leading newspaper in Puerto Rico, showed close to two-thirds of respondents had a favorable view of the Oversight Board.*

In the midst of a divided public opinion and a growing resistance movement, PROMESA entered the 2016 gubernatorial race in Puerto Rico. The two gubernatorial candidates representing the governing party and the main opposition party expressed opposite positions. Prior to the gubernatorial elections of November of 2016, the New Progressive Party (PNP) candidate for Governor Ricardo Rosselló expressed support for the control board but not for the debt restructuring. In essence, he argued that the debt problem was due to the bad administration of the governing party and not to a lack of funding. On the other side of the spectrum, former Secretary of State and Partido Popular Democratico (PPD) and gubernatorial candidate David Bernier

Table 1: Public Trust of Federal Institutions in Puerto Rico

Trust of Federal Institutions	
FBI	84%
Supreme Court	81%
Oversight Board	79%
Distrust of Federal Institutions	95% agree Puerto Rico is governed by a few groups that seek their own benefit

Source: Desconfían los boricuas en sus instituciones (2016).

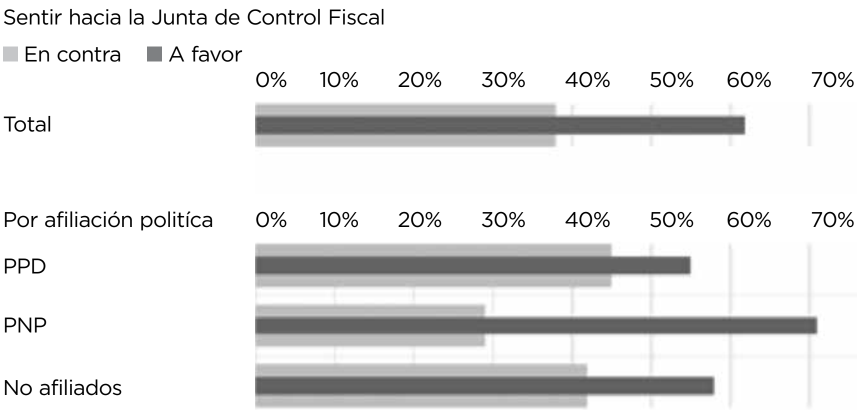
opposed the control board but supported debt restructuring. Other leaders, such as the mayor and mayoral candidate for San Juan Carmen Yulín Cruz opposed the Oversight Board because of its colonial overtones and the granting of overarching powers to supersede democratically elected local authorities.

Despite general popular support for the control board prior to the elections and vehement opposition from unions and other political leaders, the spectrum of political opinions followed, for the most part, partisan lines. Only three weeks prior to the elections, a poll conducted by *El Nuevo Dia*, the leading newspaper in Puerto Rico, showed close to two-thirds of respondents had a favorable view of the Oversight Board. Obviously, support for the Oversight Board translated into an electoral advantage to the candidate perceived to be in support of the Oversight Board (Graphic 1). Among the supporters of the Partido Nuevo Progresista (PNP) and gubernatorial candidate Rosselló, over 70 percent supported the Oversight Board, while support for the Control Board dropped to slightly more than half among those supporting candidate David Bernier of the PPD. Among independents support for the oversight Board was short of 60 percent of the respondents. But ongoing events influenced public opinion about PROMESA and the Oversight Board.

The 2016 elections results show dissatisfaction with the political parties controlling government since the late 1940's. Governor Rosselló (PNP) won the elections with 42 percent of the vote and defeated his opponent by less than 3 percent of the vote. Surprisingly, independent candidates to the governorship accumulated 17 percent of the vote—the largest percent attributed to other than the PPD and PNP candidates in decades. As significant, for a country with historically high electoral participation rates, 1.3 million registered voters did not vote. Though this number might be misleading since voters registered in prior elections were added to the electoral rosters, and the roster may include individuals who no longer are residing in Puerto Rico, there is still a marked decrease in voter participation when compare to prior elections. According to Vargas-Ramos, emigration was "not a factor in the decline of electoral participation in Puerto Rico" and the steep declined in voter participation is primarily attributed to an "extant legitimacy crisis of the political system and its political class" (Vargas-Ramos 2018).

El Nuevo Día has tracked public opinion about the Oversight Board and by implication PROMESA over time. Graphic 2 depicts the results of five different polls from the period. Public opinion was almost equally divided when PROMESA was first introduced in Congress and gained significant support immediately after its enactment on June 30, 2016. Clearly support for the Oversight Board increased after enactment, affecting the elections, and then waned in the aftermath of the 2016 elections. The decline in public support for the Oversight Board was a response to growing opposition to the austerity measures implemented by the Fiscal Plan and the approval of the first corresponding budget for FY 2018. The budget included cuts to pensions savings, public employees, furloughs, cuts in Christmas bonus, and severe to the UPR, among others. The Oversight Board's approval rating decreased from 69

Graphic 1: Support to the Oversight Board by Political Affiliation



Source: Mayor apoyo a la Junta después de aprobada (2016).

percent in October 2016 to 43 percent in a May 2017 survey, and then dropped even further in a poll taken after Hurricane Maria devasted the island.

Despite overwhelming support prior and immediately after its enactment, by June of 2017 respondents were evenly split on whether or not they believe the Oversight Board will be beneficial for Puerto Rico—51 percent believed that the FOB would be beneficial, while 49 percent believed that it would not benefit the island at all. At the time, 44 percent of participants stated that the Oversight Board favors bondholders while only 17 percent believe that they favor the people of Puerto Rico. Both of these indicators moved toward more negative perception of the Oversight Board after the election of Governor Rosselló. Despite a more critical opinion of the Oversight Board, the majority of the respondents 41 percent were in favor of Puerto Rico filing for bankruptcy, while 32 percent were against it, and the rest were neither in favor nor against the filing. Yet, a shocking 88 percent of participants said they do not know anything or had just a bit of knowledge about the PROMESA Title III process. In a subsequent poll in November of 2018, dissatisfaction with the Oversight Board reached widespread disapproval with only 21 percent of respondents in favor while 52 percent disapproved. Other indicators, such as whether the Oversight Board favors the bondholders remain about the same at 43 percent, while 19 percent indicated that the Oversight Board was beneficial to improve the economic situation. These data suggest that public opinion over time does not favor the Oversight Board and by extension PROMESA.

After PROMESA was enacted, the act called for the congressional leadership to nominate and President Obama to appoint the Oversight Board. Amidst an intense campaign from bondholders, the President appointed four members recommended by the Republican leadership, two by the Democrats, and one of his own choosing (Mufson 2016). These appointments were made a month prior to the 2016 general elections. Since the majority of appointees were candidates nominated by the Republican congressional leadership, from its inception the Oversight Board was regarded as "favorable" to bondholders (Cornwell and Brown 2016). In particular, given their past affiliations with Puerto Rico's financial institutions, Carlos García was viewed as "an investor guy" and José González as a vote for creditor-friendly policies. Besides both of them working for the Santander Bank, one of the main brokers of Puerto Rico's debt that earned hundreds of millions in fees, García was the president of the GDB under the Fortuño administration when a substantive portion of the debt was issued, especially the COFINA bonds that became the subject of litigation in court (Meléndez and Martínez 2017).

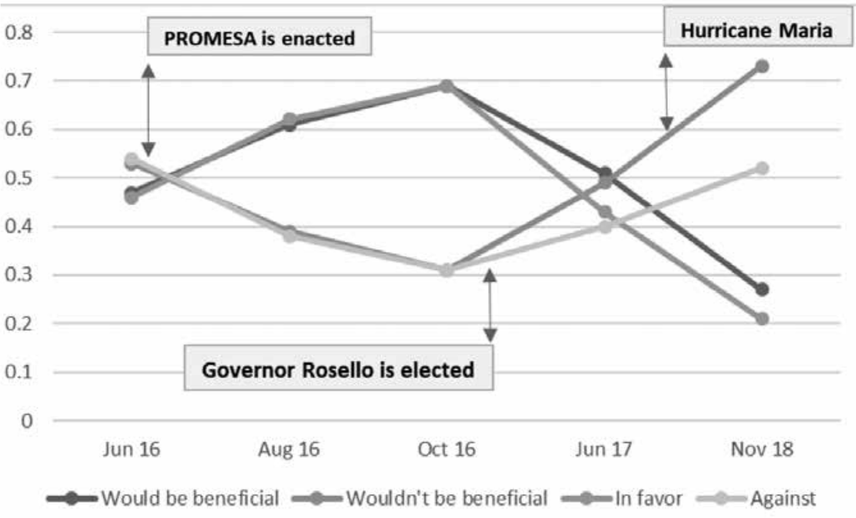
Despite criticism of García's and González's conflict of interest, other appointees to the Oversight Board were regarded as providing expertise in the core areas of public finances and bankruptcy. In terms of public finances and government restructuring, Ana Matosantos was a former director of California's Department of Finance, and Andrew G. Biggs is an expert on state and local government pensions and public sector pay and benefits. Appointees with expertise on bankruptcy included Arthur González, a former chief judge of the United States Bankruptcy Court for the Southern District of New York who presided over three of the largest bankruptcies in history—Enron, WorldCom, and Chrysler, David Skeel Jr., a professor of corporate law at the University of Pennsylvania who specializes on bankruptcy, and José R. Carrión, an executive at an insurance brokerage firm who has served as a trustee of bankruptcy and was appointed as Chair of the Oversight Board. At the time, one of the main political concerns of the White House was that a majority of the board's appointees were Puerto Rican.

Overall, the appointees with apparent or potential conflict of interest weighted more heavily on shaping public opinion than the expertise that other appointees brought to the Oversight Board. The composition of the Oversight Board was regarded as critical because of the legal powers vested on it, especially the authority to oversee and approve a ten years fiscal plan presented by government and corresponding annual budgets and the restructuring of the debt. All in all, PROMESA supersedes local budget decisions and the Oversight Board has authority over all public finances that affect the Fiscal Plan and annual budgets. The process for the approval of budgets and debt restructuring was design as interactive, where the government will make proposals and the Oversight Board will specify amendments, until ultimately the Oversight Board will decide on the adoption of financial policies. (For more discussion on the budget process see Meléndez 2018).

Hurricane Maria Changed (Almost) Everything

Embedded in PROMESA is a back and forth process between the governor and the Oversight Board under Title II of the Act for the "submission, approval, and certification of fiscal plans and budgets for Puerto Rico" (U.S. Public Law 114-187 2016). The process, full of political acrimony and posturing, was tested during the approval of

Graphic 2: Public Opinion on the Fiscal Oversight and Management Board



Source: *El Nuevo Dia*.
Note from the publisher: The participants for the June 2016 Pulso País was 500 eligible voters. The August and October 2016 editions of La Encuesta, and the June 2017 and November 2018 surveys polled 1,000 eligible voters.

the fiscal plan and the FY2018 budget. The Oversight Board requested that Governor Rosselló submitted a revised post Hurricane Maria fiscal plan. The post-Hurricane Maria projections for the following year contained in the fiscal plan included a drop in GDP of 11 percent and a population drop of nearly 8 percent (Coto 2018). The proposed plan did not include allocations for repayment of the debt and called for the privatization of the Puerto Rico Electric Power Authority (PREPA) (Giel 2018). A core assumption of the plan was that the federal government will provide $35 billion for the recovery of the island and thus made the overtly optimistic economic growth projections of 7.6, 2.4, 1.8 and 1.5 percent, respectively, in subsequent years despite the drop in GDP in the year immediately after the hurricane.

Disaster supplemental appropriations for Puerto Rico were part of funding requests that included Texas, California, Florida, and the U.S. Virgin Islands.

Federal disaster relief providing funding for Puerto Rico immediately after Hurricane Maria was channeled through the Federal Emergency Management Agency (FEMA), which coordinated with several federal agencies for individual and public assistance, and hazard mitigation. This type of funding covers rescue missions, shelter, clearing roads, establishing emergency and temporary medical care, distributing food and water, and providing alternate power sources for essential services. Disaster supplemental appropriations for Puerto Rico were part of funding requests that included Texas, California, Florida, and the U.S. Virgin Islands. Though these appropriations added over $50 billion, only $4.9 billion of these funds are loans (not grants) earmarking aid to Puerto Rico. Though the funds were eventually disbursed, four months after Hurricane Maria landed, the use of these funds was entangled on a dispute about the Commonwealth liquidity—the Oversight Board dismissed the administration claim that $1.7 billion in the Treasury Single Account (TSA) were restricted funds not available to the Commonwealth for disaster-related expenses and requested the completion of a forensic analysis of government bank accounts before releasing the funds (Lloréns Vélez 2018). The PREPA and the Aqueduct & Sewer Authority (PRASA) were the two public corporations most affected by insolvency.

When Governor Rosselló included $35 billion in federal aid for disaster in the fiscal plan submitted to the Oversight Board, he was considering long-term recovery and rebuilding funding such as the one provided by the Community Development Block Grant Disaster Recovery Program (CDBG-DR). Besides completing the restoration of downed power lines and the repair of damaged infrastructure long-term assistance will include the implementation of economic revitalizations strategies. For this phase of the post-hurricane rebuilding, Governor Rosselló requested $94.4 billion from Congress to rebuild the island's infrastructure, housing, schools, and hospitals. Estimates to repair the damaged caused by the storm included $31.1 billion for housing and $17.8 billion to rebuild and make more resilient the power grid (Bases 2017).

It is common for Congress to fund disaster recovery in various stages. Appropriations for Hurricanes Katrina and Sandy came only weeks after the storm, but with major disasters in Texas, Florida, California, and the Caribbean there was a backlog in producing the damage estimates that guide Congress in the appropriations process. After initial allocations for short-term disaster relief mostly disbursed through FEMA, more than $30 billion are in some way earmarked or have been distributed to Puerto Rico (Rebuild Puerto Rico 2018). In addition to a prior $1.5 billion allocation through the CDBG-DR program and the aforementioned $4.9 billion loan, earmarked funds included $4.8 billion to fund Puerto Rico's Medicaid program for two years, $2 billion for electric power restoration, and an additional $9 billion for housing and infrastructure projects.

Disaster relief funding in many ways represent the injection of capital to the island's economy that the Congressional Task Force on Economic Growth in Puerto Rico (the "Task Force") recommended but never materialized, yet in a significantly changed context after the economic devastation caused by Hurricane Maria. The Task Force made critical recommendations that have gone unattended after their final report was given to Congress. PROMESA was enacted by the 114th Congress under the premise that it was not going to be a "bailout." In many ways, Hurricane Maria opened the door for aid to Puerto Rico, yet the actions (or inaction), the track record of the 114th Congress toward the economic crisis in Puerto Rico is clear and consistent.

Pending for congresional consideration are bills addressing the Task Force recommendations on health care (Severino Pietri 2017), to extend on a permanent bases funding for Medicaid (Respaut and Brown 2017) and lift the cap for federal matching rate for Medicare; amending Section 24 of the Internal Revenue Code to include eligible families in Puerto Rico with one child or two children to claim the Child Tax Credit; support for small businesses; and, to extend the Investment Company Act of 1940 protection to investors in Puerto Rico. Betides the U.S. Territories Investor Protection Act that was approved by the House of Representatives and awaits resolution in the Senate, all of these recommendations have not been considered by Congress (Martínez 2017). Other Task Force recommendations aimed at improving the operations of federal agencies in Puerto Rico could be considered by Congress. These include recommendations to Census Bureau to improve data collection, to the Department of Commerce and Economic Development Administration for technical assistance, and to various agencies supporting the restoration of Caño Martin Peña and to conduct more studies about the impact of landfills on public health and the environment. The Task Force could not reach a consensus to recommend the extension of the Earned Income Tax Credit (EITC) to Puerto Rico as recommended by President Obama (Cornwell 2016), or other policies to support economic development.

In the end the 114th and 115th Congresses and a White House controlled by a Republican majority have implemented at best a minimalist agenda for the economic recovery of Puerto Rico. Even disbursement of a $4.9 billion federal loan for disaster relief exacted tight scrutiny by both FEMA and the Oversight Board. In this context, excluding recovery funding post Hurricane Maria, the prospect for more forceful stimulus policies similar in scope to President Barack Obama's package of $7 billion (spent from 2009 to 2013) through the American Recovery and Reinvestment Act of 2009 (ARRA) are unlikely. In part, besides the "no-bailout" conservative narrative in support of PROMESA, the perception of local fiscal mismanagement was reinforced after Hurricane Maria when a $300 million contract was extended to Whitefish, a small firm with only two employees at the time, and subsequently canceled after a public outcry and the subject of an active FBI investigation (Irfan 2017).

This perception of local fiscal mismanagement and corruption permeates members of Congress' understanding of the situation in Puerto Rico and affect the policy decision process. In a hearing of the House Committee on Natural Resources committee, former Chairman Rob Bishop (R-Utah) asserted that the government of Puerto Rico had a "credibility gap" referring to near the $95 billion request for hurricane recovering funding and the need for accountability in the disbursement of federal assistance. Chairman Bishop stated, "This lack of institutional control within Puerto Rico's largest municipal debtor raises grave concerns about PREPA's, and by association, the government of Puerto Rico's ability to competently negotiate, manage and implement infrastructure projects without significant independent oversight." He added that the island's "controversial decisions" may have made the crisis worse (Guadalupe 2017). In part as a response to these perceptions, and in part to replace some of the coordination functions that the Government Development Bank exercised before its elimination, Governor Rosselló and the legislature created the Enabling Act of the Fiscal Agency and Financial Advisory Authority (FAFAA). In addition to serving as fiscal and reporting agent for the various government agencies receiving federal funding they are tasked with serving as an intermediary with the Oversight Board. Whether the FAFAA will be able to instill operational discipline and transparency in the administration of recovery and economic development projects to overcome the entrenched perception among members of Congress of mismanagement and corruption in Puerto Rico remains an open question.

Conclusions and Discussion

PROMESA was the only politically feasible policy option at the time it was enacted, and there were significant tradeoffs and contradictions embedded in PROMESA that may render it inadequate as a policy framework to achieve its main goal of stabilizing Puerto Rico's finances. To pass the legislation supporters of the bill had to concede the installation of an Oversight Board to control the island's finances in exchange for bankruptcy procedures to allow for the orderly disposition of the debt. And, because that core political compromise to pass the legislation excluded the allocation of federal resources to deal with the impending health crisis or provided a clear mechanism for developing a comprehensive plan for job creation and economic development, PROMESA and the Oversight Board's ability to stabilize the island's economy remains an open question. Yet, it is certain that the presence of the Oversight Board itself broke the foundation of self-governance initiated more than a century ago and as reflected in the Commonwealth constitution. This is not to say that Puerto Rico somehow had autonomy or sovereign powers independent of U.S. authority, but PROMESA itself represents evidence of the ongoing contentiousness in the political relationship between Puerto Rico and the United States.

All in all, PROMESA is a continuation of an erratic historical pattern of U.S. policy implementation toward Puerto Rico. Section 936 of the Internal Revenue Code was created to support the island's recovery after the OPEC oil embargo of the mid-1970s dismantled the oil refinery industry that anchored the Puerto Rico economy at the time. When Section 936 was phased out by a coalition led by President Clinton and the pro-statehood governing party, it was a major contributing factor leading—along of global economic trends and local fiscal mismanagement—to the fiscal and economic crises of the last decade. Borrowing in U.S. municipal markets was a cornerstone of industrial development and urbanization especially during the postwar. But to understand the ongoing fiscal and debt crises, and the enactment of PROMESA as a solution to such crises, one must also consider that Congress inexplicably stripped Puerto Rico's municipalities and public corporations from legal recourse to bankruptcy in 1984.

PROMESA's core components were and are contentious to various constituencies affected by the legislation, and it received divided support from the Puerto Rican people and its elected officials when enacted. Public opinion polls at the time indicated that a majority supported federal action to restore fiscal solvency based on a core belief that U.S. institutions such as the Supreme Court or the FBI are more trustworthy than local political elites who mostly serve "their own interest." But support to the policies implemented by the Oversight Board and by implication the perceived benefits of PROMESA to Puerto Rico is contested terrain—an evolving dynamic that in part depends on the severity of ongoing austerity, the results of the audit of the debt and the accountability of those responsible for a broken government, congressional action to help with the recovery from the natural disaster and the impending health crisis, and the ability of the local political elite to transcend their own limitations in governance.

As comparable cases in New York City, Washington, D.C., and Detroit suggest, solvency and fiscal stability will be achieved eventually through the restructuring of the debt, fiscal reforms, and restoring access to capital markets—the real question is how long would it take, and by implication at what cost to the Puerto Rican people? In answering this question, we need to consider that ultimately there are three interacting actors that share responsibility in the solution to the fiscal, economic, and humanitarian crises. Whether PROMESA offers a pathway to fiscal stability in the island depends on the actions of the Puerto Rico government, the Oversight Board and Congress. First, the most responsibility falls on the Puerto Rico government. The governor and the legislature have the mandate to initiate reforms and implement the policies by engaging a broad range of local and external actors in the reconstruction project. Second, the Oversight Board, as they are empowered to approve the fiscal plans and corresponding budget and in the end, decide the balance between austerity and public services. Lastly, Congress has the responsibility to enact policies that are supportive of these efforts and not harmful to economic development.

The Oversight Board has undertaken two steps that may potentially validate the enactment of PROMESA in the near future and swing public opinion in their favor. The first was to engage the federal court in bankruptcy procedures. The debt hangs over Puerto Rico as the Sword of Damocles. PROMESA's stay on payments provided a respite to the embattled finances of the island while the filing on federal court offered an orderly way for the disposition of the debt. The outcome of the bankruptcy case will be fully known at some point in the future, and hopefully it will represent a important step toward restoring access to credit markets under competitive conditions. A second significant action undertaken by the Oversight Board is the audit of Puerto Rico's debt. The Oversight Board set up a special committee to examine the issuing of Puerto Rico's debt and appointed an independent investigator to carry out the audit. A preliminary report was issued by the end of 2018 with broad recommendations for reforms but a final report has not been issued yet. A debt auditing that is fully transparent and uncovers the individuals and financial institutions responsible for wrongdoing to Puerto Rico will go a long way in restoring public faith in governing institutions.

Ultimately, the success of PROMESA hinges on congressional action to support economic recovery. A core assumption of the revised plan submitted by the governor to the Oversight Board in the aftermath of the destruction caused by Hurricane Maria is that the federal government will provide a $35 billion appropriation for the recovery of the island. Based on the recent experiences of Katrina and Sandy, it is more likely that Congress will make several appropriations over subsequent years. And in the case of Puerto Rico, given members of Congress's perception of local fiscal mismanagement and corruption and recent experiences with disaster assistance to Puerto Rico, these appropriations are likely to depend on audited assessments of damages and costs by third parties, perceived safeguards for the management of funds and vetting by the Oversight Board, and competent implementation of reconstruction and economic development projects. In short, how much disaster recovery assistance Puerto Rico will receive and the timing of federal appropriations are unknown factors with a relatively high degree of uncertainty.

Besides disaster recovery assistance, the success of PROMESA also hinges on congressional action to implement the recommendations of the Task Force. The economic agenda recommended by the congressional Task Force was a call for action, and the main components of the policy agenda have not changed since they were originally proposed—among them, maintaining funding for health programs. Other measures such as expanding the Child Tax Credit (CTC) and adding the Earned Income Tax Credit (EITC) might be revisited by a new Congress. Whether the devastation of Hurricane Maria would persuade Congress to act on some of these or perhaps other economic stimulus policies will depend more on the composition of 115th than on policies likely to be adopted by the 114th Congress dominated by a conservative caucus that enacted PROMESA to *avoid* (emphasis added) a "bailout."

PROMESA has made apparent the contradictions of the territorial status of Puerto Rico and the congressional authority over the island. In the midst of a shifting political terrain in response to PROMESA there are two notable social movements with potential long-term implications. The first is a growing dissatisfaction with conventional political parties as illustrated paradoxically by both the support received by independent candidates to the governorship accumulating 17 percent of the popular vote, and the large number of registered voters not voting in the 2016 elections presumably because of dissatisfaction with electoral options. Any alliance of the independent or dissatisfied sectors with either of the existing political parties would have easily wiped out the small margin of votes that separated the candidates from these parties. This realignment of political forces may lead to political coalitions that support a reformist agenda with a focus on overcoming public mismanagement. The second is the ascent of a stateside diaspora solidarity movement for Puerto Rico. As a result of the millennial migration, the majority of Puerto Ricans, about six of every ten, reside now in states across the nation with concentrations in key electoral states such as Florida, Pennsylvania, and Ohio. Their actions preceding the enactment of PROMESA included nationwide direct action in the districts of members of Congress, and a more robust presence among local elected officials in both parties across the country. Potentially the diaspora could be a deciding factor in spurring congressional action in support of Puerto Rico. The historical outcome of PROMESA is still unfolding and the emergence of independent political forces in Puerto Rico and an emergent solidarity movement in the diaspora may prove to be important elements in the future of Puerto Rico.

ACKNOWLEDGEMENTS

I appreciate all the valuable comments and suggestions from anonymous referees and other colleagues. The opinions and conclusions expressed here are my own and do not represent the official opinion or standing of Centro, Hunter College, CUNY, or all others who have shared with me their comments and suggestions for this essay.

NOTES

[1] The act states: “The provisions of this Act shall prevail over any general or specific provisions of territory law, State law, or regulation that is inconsistent with this Act.”

[2] Carlos García, José González, Ana Matosantos and José R. Carrión are Puerto Ricans.

[3] Congress could help the territory by simply funding its Medicaid system the way they fund the states (Newkirk 2017).

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