

# THE IMPERATIVE OF DEMOCRACY IN TIMES OF AUSTERITY

## ARTICLE

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### INTRODUCTION

ONE OF THE PHOTOGRAPHS OF THE 2018 MAY DAY PROTESTS IN PUERTO Rico shows two children in blue shirts soaked in water.<sup>1</sup> To wash police tear gas from their eyes, their mother has emptied a water bottle on each child's face. Thousands of people turned out that day to protest a budget released by *La Junta*,<sup>2</sup> the Financial Oversight and Management Board appointed by the federal government to govern the Island's debt and spending for a period of at least four years.<sup>3</sup> In Spanish, *La Junta* simply means *The Board*, but the intensity of protests and the police reaction to them seemed more consistent with the word *junta*'s meaning in English: a political group that rules a country after taking power by force. As it happens, the external strongmen trying to flex power in Puerto Rico are not the members of the Board itself. They are the large-scale owners of Puerto Rican debt and the members of the U.S. Congress who are beholden to them. "Welcome to the oldest colony," a new mural reads in San Juan.

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\* Professor of Law, Stanford Law School. Mónica Molina, a law student at Stanford and my excellent research assistant on this essay, is a proud example of mainland Puerto Ricans working overtime to serve the Island. The students of the University of Puerto Rico Law Review have come through an extremely difficult year in Puerto Rico, and yet they managed to organize one of the most thoughtful and productive symposiums I have attended. Gabriela M. Moros Luces captured students' dislocation by Hurricane Maria, and their grace in adapting to it, when she said: "It became such a privilege to be able to study. That meant you had light. You had a computer and you could access your readings. It meant it was quiet, away from the terrible noise of the generators." I am personally grateful to them for their work and for their example.

<sup>1</sup> Anés Cedeño, FACEBOOK (May 1, 2018), <https://www.facebook.com/AnesCedeno/posts/10157422813337995>.

<sup>2</sup> Patricia Mazzei, *Protest in Puerto Rico over Austerity Measures Ends in Tear Gas*, N.Y. TIMES (May 1, 2018), <https://www.nytimes.com/2018/05/01/us/puerto-rico-protests.html>.

<sup>3</sup> See Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. §§ 2121-2241 (2016).

This is a strange time to talk of the imperative of democracy in Puerto Rico. At the symposium at the University of Puerto Rico Law School where I delivered a version of this essay, Dr. Arturo Massol made his view plain: “*there is no democracy in Puerto Rico now. There has never been true democracy in Puerto Rico.*”<sup>4</sup>

I take his point. Democratic power and self-governance in Puerto Rico have always been compromised under American law.<sup>5</sup> The fiscal crisis has made that limited autonomy truer and more visible. The Board was not elected by the Puerto Rican people and it cannot be unelected by them. There is no public role in shaping or approving the Board’s decisions. If the Board’s work thus seems unaccountable, it can also seem opaque and technical, crowded with spreadsheets and legal papers filed at a New York City courthouse. None of that is to say that the Board’s work might not be respected in the end: the restructuring will help Puerto Rico lighten the impossible weight of its debt and save public sector pensioners from financial ruin. Its members may prove to have been wise at managing difficult tradeoffs between paying for services and paying back creditors. But Dr. Massol was nonetheless correct: self-governance in Puerto Rico, such as it was, has been suspended by the U.S. federal government, over which Island residents have no voting rights.<sup>6</sup>

If the fiscal oversight process makes the practice of democracy hard, it has been made even harder by a crisis of confidence with regards to the officials who were elected by the Puerto Rican people, with widespread disappointment over post-hurricane reconstruction and their management of the government and finances in general. *La Junta* does not enjoy the trust or support of a majority of residents, but it stands to wonder how many of the Island’s elected officials do either.

This situation is unfortunately familiar. In national research for a forthcoming book about local governments in fiscal crisis,<sup>7</sup> I have seen repeatedly how these two dynamics—citizen powerlessness during a fiscal takeover process along with rising faithlessness in elected leaders—can work together, causing the public to withdraw from any engagement with public governance. It is a vicious cycle, in which an obtuse and technical process makes it harder for ordinary citizens to

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4 See Arturo Massol Deyá, *De la autogestión a la insurgencia energética: Una historia de supervivencia, resistencia y gobernanza comunitaria*, 87 REV. JUR. UPR 648 (2018).

5 As a U.S. territory, Puerto Rico has neither the powers of a state (including two senators, a Congressional delegation based on population, and resident voting rights in the presidency), nor the powers of an independent nation (like the power to set trade and monetary policy). Under various forms of colonial rule by the United States since 1900, it was not until 1948 that the Island had the power to elect its own governors. For an excellent history of Puerto Rico’s legal and political status, see Juan R. Torruella, *Why Puerto Rico Does Not Need Further Experimentation with Its Future: A Reply to the Notion of Territorial Federalism*, 131 HARV. L. REV. 65 (2018).

6 The territory lacks meaningful leverage and participatory rights in federal politics. Its residents are U.S. citizens, but they have no federal voting rights unless they move to the mainland. Puerto Ricans who remain in the Island elect a representative to Congress, but that delegate is not allowed to vote on legislation. *Id.* at n.239.

7 MICHELLE WILDE ANDERSON, *THE FIGHT TO SAVE THE TOWN* (forthcoming 2019).

participate at precisely the same time that faith in government has been weakened. When people withdraw under the management of an oversight board, important decisions are made to cut, reorganize and privatize government without their input. It can set government up for new failures in the future, more disappointment, more withdrawal, more cuts. Even when important objectives are accomplished—whether by the elected officials or the fiscal oversight board—the general public doesn't seem to notice or celebrate. Good people turn away from taking public sector jobs or running for office, and taxpayers reduce what they are willing to share from their paychecks.

So yes, it seems like a strange time to talk of democracy. Yet such talk is needed. When democracy at the top of a system is compromised by a period of external fiscal control, a community's citizens must do more than ever to restore it from it below. The practice of democracy is the only path forward to build networks within the public today that can hold oversight accountable and reclaim self-governance tomorrow.

That idea, which is as simple to say as it is hard to achieve, is the heart of these remarks. During a period of government fiscal crisis, residents or others who care about the place must engage, more intensively than ever, in the practice of democracy. I want to emphasize this word *practice*, so allow me to be more specific: *during a period of fiscal crisis for a government, residents or others who care about the place must do more than ever to remake the social fabric of accountability and trust in government.* Typically, we think of democratic engagement in individualistic terms, such as staying informed about public affairs through credible news sources, turning out for elections, engaging on social media, leading and participating in protests, writing and calling officials, and talking about politics with family and friends. But in high-poverty settings facing austerity budgets, this work must also happen at the neighborhood and institutional scale; that is, organizing residents to work together to identify priorities, learning the levers for political action on those issues, focusing community effort on particular institutions and advocating for solutions.

The practice of democracy not only makes the management of a fiscal crisis more honest and fair. It is also an anti-poverty project. The current extremes in inequality, on the U.S. mainland and in Puerto Rico, create high levels of poverty combined with a precarious middle class. To restore social mobility in that context means rebuilding a strong local public sector that is capable of delivering an education system suited to the modern economy. A restoration of government that can ease the daily burdens on the cash-strapped public will also mean providing affordable services and amenities whether recreational facilities for kids or urban transit for people who cannot afford to pay out of pocket for them.

In that way, the practice of democracy is a means to an end: a way of reengaging the broader public in government in order to hold it accountable to their needs. It is also an end in itself. It chips away at the structure of power and poverty that drives most fiscal distress in the first place. All the things that democracy requires—the organizing, the writing and reading and public speaking, the network formation, the protests—contribute to with the larger mission of education,

empowerment, and social capital that is critical to easing and reducing poverty. Meanwhile, these practices and activities reconnect people to each other at a time when crime, stress and powerlessness are working to separate them. At their best, citizen movements can ease population loss by giving young people, including professionals like the future lawyers editing this essay, a sense of purpose and community.

This essay engages with the problem presented by the fact that during times of fiscal crisis, the practice of democracy seems futile at a point when it is critical. In order to offer examples of democratic progress during periods of unelected fiscal management, I draw lessons not just from Puerto Rico, but from Lawrence, Massachusetts, a mainland city shaped deeply by the Puerto Rican diaspora. In Part I, I describe the historical moment in Puerto Rico today—unfortunately, a situation ripe for the long-term decline of citizen faith in government. In Parts II and III, I offer two different scales of action for resisting that decline: the neighborhood-scale grassroots democracy underway in Lawrence and the institutional or sectoral scale watchdog work in Puerto Rico, respectively. I hope that the essay supports Puerto Ricans and others under receiverships, including the University of Puerto Rico (UPR) students and faculty, in reflecting upon and developing a broader democratic toolkit specific to the politics of austerity and fiscal oversight.

I do not pretend that practicing democracy will provide a quick fix in these contexts. Just as it is slow work to drag a relatively prosperous place into poverty, it is slow work to bring a poor place into prosperity. Social change, whether for good or ill, is made by networks of people over time, not individual heroes or demons making bold moves. With some of the highest voter turnout rates on the globe and a culture of political engagement, Puerto Ricans can resist the momentum of declining government faith, capacity and accountability. They can make their mark on fiscal management now and be ready to retake their government on new terms going forward. They can work to ensure that as those two children in the photograph grow up, they will know government for more than its tear gas supply. Those children should feel empowered to know that protests are indeed part of a healthy democracy, and that they are just the beginning.

## **I. THE UNRAVELING OF FAITH IN GOVERNMENT**

Fiscal crises endanger government capacity and accountability at a time when the population needs good government most. Here is how that works, in general and specifically in Puerto Rico.

The unraveling begins with hard times, including job losses that make it increasingly difficult for households to afford the basics of shelter, transportation, food and utilities. Anxiety and cynicism rise apace. (“No jobs, no dreams,” as a taxi driver once told me). Business closures alongside falling consumption and property values mean falling tax revenues, which makes it hard for the public to afford adequate services for education, emergency services, parks and public works.

In Puerto Rico's case, this meant an extended and particularly savage version of the Great Recession, with more than ten years of economic decline.<sup>8</sup> A large share of the job base before the recession depended on tax incentives that attracted and held major American manufacturing companies only as long as the policies lasted, and in any event, had returned much of the wealth generated by local production to mainland owners. Instead of investing in education and the skill base, the postwar economic development model was—as in so many places trying to transition from an agricultural economy to an industrial one, including the American South—to recruit Northeastern and Midwestern manufacturing businesses. Soon enough, when these developing regions tried to make manufacturing businesses regular taxpayers like their employees, manufacturing moved on again, leaving those regions in the Rustbelt's same shoes. In 1996, the federal government began to phase out a federal corporate income tax credit in Puerto Rico, which ended completely in 2005.<sup>9</sup> The number of businesses claiming this credit fell across these phase-out years from 440 (in 1995) to 157 (in 2005), a development that coincided with the intensification of globalization in manufacturing.<sup>10</sup> The Great Recession showed up to make matters worse, and from 2005 to 2017, Puerto Rico's average unemployment rate was 13.1%—more than double that of the U.S. across this same period.<sup>11</sup> By 2016, Puerto Rico's median annual income was \$20,078—less than half the median income in Mississippi, the lowest income state.<sup>12</sup> Even before the 2017 hurricanes, nearly six out of ten children on the Island were living under the poverty line.<sup>13</sup>

For many areas, population loss follows rising unemployment, as people move to find opportunity elsewhere. These departures bring their own costs in lost skills, an aging population, rising blight, and depressed morale. Puerto Rico has faced this dynamic to an extreme, with such a large share of the Island's working age population migrating towards mainland employment that the rate of population loss is ten times greater than that of West Virginia, which is the only U.S. state with population growth below zero.<sup>14</sup> Between 2004 and 2017—that is, even

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<sup>8</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, PUERTO RICO: FACTORS CONTRIBUTING TO THE DEBT CRISIS AND POTENTIAL FEDERAL ACTIONS TO ADDRESS THEM 6 GAO-18-387 (2018), <https://www.gao.gov/assets/700/691675.pdf> (stating that from 2005 through 2016, the most recent year for available data, Puerto Rico's real gross domestic product fell by more than 9% and its gross national product (GNP) declined by more than 11%).

<sup>9</sup> This federal corporate income tax credit of Internal Revenue Code section 936(a)(1) was repealed in 1996, although existing claimants at that time were eligible to continue claiming credits through 2005. *Id.* at 5-6.

<sup>10</sup> *Id.* at 32.

<sup>11</sup> *Id.* at 8.

<sup>12</sup> *Id.* at 29, n.47.

<sup>13</sup> Jens Manuel Krogstad et al., *Key Findings about Puerto Rico*, PEW RESEARCH CENTER (March 29, 2017), <http://www.pewresearch.org/fact-tank/2017/03/29/key-findings-about-puerto-rico/>.

<sup>14</sup> ANNE O. KRUEGER ET AL., *Puerto Rico—A Way Forward* 7 (2015), <http://www.gdb.pr.gov/documents/PuertoRicoAWayForward.pdf>.

before the massive outmigration caused by Hurricanes Irma and Maria—Puerto Rico lost half a million people. This constitutes a 12.8% decline—more than one in ten people leaving over just the past decade.<sup>15</sup> The combination of a dwindling business and tax base with a declining working-age population has been aptly described as an “economic death spiral.”<sup>16</sup>

For a while, government—like individuals—may be able to delay the worst losses through borrowing, even as the debt load makes new loans increasingly risky. With a falling revenue base but a rising need for services for the aging and increasingly jobless population left behind, the Island government became desperate to patch its budget holes by borrowing money, and bond markets showed a voracious appetite to lend to Puerto Rico to take advantage of American tax laws that let investors keep their interest tax-free. But debt cannot accumulate forever; sooner or later the government starts to cut deeply into services. More job losses, more contraction of spaces, services and activities that citizens can count on when they are cash poor. As the public comes to rely most on government, government has less to give. The debt and deficits generate doubt—doubt that the government is responsible, doubt that leaders can climb out of a deepening hole. Any mismanagement—or even worse, corruption—confirms and reinforces low expectations and slumping morale. Puerto Rico unfortunately has had some of both.

Government is cornered by an impossible debt bound by enforceable contracts at a time of peak citizen needs. A sovereign nation could try a few additional moves through their monetary policy, but a city, state or territory cannot. Something has to give. Enter fiscal oversight and restructuring: a dual commitment to reduce spending as well as debt. Both might well be necessary, but the rhetoric of “tough choices” on spending is naturally unwelcome at a time when government is already falling short. Budgeting is unlikely to be transparent or to reserve a formal role for public input or accountability. The restructuring process also feels stacked against public need, because all creditors in that process are not lawyered equally; i.e., the largest creditors can aggressively pursue their interests through courts, political lobbying and even public relations campaigns. However, UPR law student Sol Vázquez Ortiz put it well when she explained to me in the symposium that: “Teachers here just can’t afford those kinds of lawyers.” Combined with how obtuse and technical restructuring and budgeting can be, the general public feels powerless in an unfair process.

Puerto Rico had reached this crossroads of unpayable debt by February 2014, when rating agencies downgraded Puerto Rico bonds to junk status.<sup>17</sup> In June of that year, the Island attempted to grant itself a form of bankruptcy relief to re-

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<sup>15</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 8, at 8.

<sup>16</sup> Lara Merling et al., *Life After Debt in Puerto Rico: How Many More Lost Decades?*, CENTER FOR ECONOMIC & POLICY RESEARCH (2017), <http://cepr.net/images/stories/reports/puerto-rico-2017-07.pdf>.

<sup>17</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 8, at 34 n.58.

structure its debts, the Puerto Rico Public Corporation Debt Enforcement and Recovery Act.<sup>18</sup> In 2016, however, the U.S. Supreme Court struck down this law in *Puerto Rico v. Franklin California Tax-Free Trust*.<sup>19</sup> The case held that, unlike the fifty states, Puerto Rico was excluded from federal bankruptcy law's benefits (access to restructuring), but subject to federal bankruptcy law's burdens (a bar against state enactment of a municipal debt restructuring process).

Juan R. Torruella, an esteemed Puerto Rican judge on the U.S. Court of Appeals for the First Circuit, voiced his disillusionment with *Franklin*, calling it a "throwback to the era of the *Insular Cases*," which demonstrated that Puerto Rico's purported postwar autonomy was "another monumental hoax."<sup>20</sup> The current era of governance there, he wrote, had revealed itself as "a repackaging of the same unequal colonial relationship that has been in place since American troops landed in Guánica in 1898."<sup>21</sup> For Torruella, various legal "experiments" with Puerto Rico's status have "merely perpetuated the inherent inequality of the United States citizens who reside in Puerto Rico as compared with the rest of the nation, and is the major cause of the Island's economic crisis."<sup>22</sup> This larger context of despair and frustration over Puerto Rico's relationship with the United States only increases the risk of alienation and despair with government.

After *Franklin*, the only option for debt restructuring lay with Congress. So too, Congress held on to the power to define the terms of that restructuring, because an earlier bankruptcy bill introduced by Pedro Pierluisi, Puerto Rico's Resident Commissioner to the U.S. Congress at that time, died in committee.<sup>23</sup> Within days of the *Franklin* decision, Congress had a final version of the Puerto Rico Oversight, Management and Economic Stability Act of 2016 (known as P.R.O.M.E.S.A.) on President Obama's desk, where it was signed into law on June 30, 2016. It was, depending on your viewpoint, either too late or exactly on time: the following day, Puerto Rico defaulted on its general obligation debt for the first time.<sup>24</sup>

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<sup>18</sup> Puerto Rico Public Corporation Debt Enforcement and Recovery Act, 13 LPRA §§ 111-113nn (2012 & Supl. 2017).

<sup>19</sup> The Court interpreted federal bankruptcy law to classify Puerto Rico as a "state" for some purposes but not for others—it excluded Puerto Rico from the authority that American states have to authorize their municipalities to seek bankruptcy protection, but included them as a "state" for purposes of the preemption clause barring states from enacting their own bankruptcy laws. *Puerto Rico v. Franklin California Tax Free Trust*, 136 S.Ct. 1938, 1945-46 (2016).

<sup>20</sup> Torruella, *supra* note 5, at 89.

<sup>21</sup> *Id.* at 66.

<sup>22</sup> *Id.* at 67.

<sup>23</sup> Puerto Rico Chapter 9 Uniformity Act of 2014, H.R. 5305, 113th Cong. (2014), <https://www.congress.gov/bill/113th-congress/house-bill/5305> (last visited June 10, 2018). That bill treated Puerto Rico as a state for purposes of Chapter 9.

<sup>24</sup> Heather Gillers & Nick Timiraos, *Puerto Rico Defaults on Constitutionally Guaranteed Debt*, WALL ST. J. (July 1, 2016), <https://www.wsj.com/articles/puerto-rico-to-default-on-constitutionally-guaranteed-debt-1467378242>. See also Antonio J. Pietrantonio, *Restructuring Puerto Rico's General Obligation Debt*, 85 REV. JUR. UPR 629 (2016) (offering a broader analysis of the legal options and constraints for restructuring general obligation debt given Puerto Rico's legal status).

P.R.O.M.E.S.A. created a fiscal oversight board for managing Puerto Rico's finances and for leading the government through a form of bankruptcy. The Board, which was seated in August of 2016, consists of seven members—four Republicans and three Democrats—recommended by Congress and appointed by the President, as well as one ex officio member designated by the Governor of Puerto Rico. The multi-step budget planning process of P.R.O.M.E.S.A. calls for the Board to review a fiscal plan submitted by the Governor and it gives the Board sole discretion to review that plan, recommend changes, approve revisions or develop an alternative plan.<sup>25</sup> On November 18, 2016, the Board adopted five principles to determine whether a proposed fiscal plan complies with P.R.O.M.E.S.A. After some back and forth on various versions, the Board approved the Governor's proposed fiscal plan on March 13, 2017. Later that spring, on May 3, 2017, after a period in which negotiation efforts to secure voluntary concessions from creditors "have gone nowhere," the Board mobilized P.R.O.M.E.S.A.'s Title III to file for debt restructuring of the \$123 billion in debt of Puerto Rico's central government.<sup>26</sup>

That was then. Hurricane Maria made landfall in Puerto Rico on September 20, 2017. Winds of up to 140 mph, coastal storm surges up to six feet high, and rainfall of between fifteen and forty inches tore across the Island.<sup>27</sup> In numbers measured by the tens of thousands, electrical poles and cell towers were torn from the ground, homes and roadways collapsed in landslides, home and shop windows exploded and floodwaters destroyed buildings and car engines. New research finds that the average household had no cell phone service for forty-one (41) days, no water for sixty-eight days (68), and no electricity for eighty-four (84) days after the storm.<sup>28</sup> In remote areas, most households lacked electricity for more than three months.<sup>29</sup> The death toll for the storm—including indirect deaths from the lack of electricity, for instance a kidney patient without access to dialysis—is estimated to be no lower than 793 and as high as 8,498.<sup>30</sup> Power losses meant ongoing interruptions to medical care and hospital closures, not to mention disarray in education, as schools relied on irregular power or served as long-term shelters for

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<sup>25</sup> Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. §§ 2121-2241 (2016).

<sup>26</sup> Mary Williams Walsh, *Puerto Rico Declares a Form of Bankruptcy*, N.Y. TIMES (May 3, 2017), <https://www.nytimes.com/2017/05/03/business/dealbook/puerto-rico-debt.html>. As called for under the law, Chief Justice John Roberts appointed U.S. District Court Judge Laura Swain of the Southern District of New York to preside over the bankruptcy of Puerto Rico. 48 U.S.C. § 2168(a). For commentary on this unusual feature of the law, see Melissa B. Jacoby, *Presiding over Municipal Bankruptcies: Then Now and Puerto Rico*, 91 AM. BANKR. L.J. 375, 389 (2017).

<sup>27</sup> ERICA KULIGOWSKI, UPDATE ON PRELIMINARY RECONNAISSANCE OF HURRICANE MARIA (PUERTO RICO), NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, U.S. DEPT. OF COMMERCE (2018), [https://www.nist.gov/sites/default/files/documents/2018/02/20/03\\_update\\_on\\_preliminary\\_reconnaissance\\_of\\_hurricane\\_maria\\_puerto\\_rico.pdf](https://www.nist.gov/sites/default/files/documents/2018/02/20/03_update_on_preliminary_reconnaissance_of_hurricane_maria_puerto_rico.pdf).

<sup>28</sup> Nishant Kishore et al., *Mortality in Puerto Rico after Hurricane Maria*, NEW. ENG. J. MED. (May 29, 2018), <https://www.nejm.org/doi/full/10.1056/NEJMsa1803972>.

<sup>29</sup> *Id.* (finding that 83% of households in the most remote areas did not have electricity for the entire time period of the study, from September 20 to December 31, 2017).

<sup>30</sup> *Id.*

displaced residents.<sup>31</sup> With damage estimates reaching \$90 billion, Hurricane Maria has been ranked the third costliest tropical cyclone to hit the U.S. in the last 117 years.<sup>32</sup>

So it was that this symposium was framed “Law in Times of Disaster” in both fiscal and humanitarian terms. Puerto Rico faces three disasters right now: devastating levels of poverty, a government debt crisis, and mass destruction by the hurricane. Each disaster has aggravated the other; each has depressed the sense of trust in government. The Executive Director of the P.R.O.M.E.S.A. Board, Natalie Jaresko, noted how much things have changed. “PROMESA and its tools were not written for responding to or recovery from a catastrophic hurricane,”<sup>33</sup> she said in a written statement to Congress. Federal funds for disaster relief were now part of the picture, she wrote, and the Board would take “an active role in ensuring those monies are used in the best interest of the Island.”<sup>34</sup> She recognized, and it is surely true, that “ensuring fiscal controls to deliver confidence in the government is key.”<sup>35</sup> The May Day protests expressed another key principle: the Board should not adopt austerity measures that will impose further hardship.

On April 19, 2018, and then in final form on May 30, 2018, the Board certified its revised fiscal plans for Puerto Rico, the Puerto Rico Electric Power Authority (PREPA), and other government-controlled entities. The plans emphasize several austerity measures consistent with American neoliberal politics—including labor reforms like ending at-will employment and setting work requirements for welfare benefits; personnel reductions in government; and tax breaks for corporations alongside greater tax enforcement against residents. But so too, it calls for some measures that may reassure the left, like workforce training investments, a more diverse fuel mix, a Puerto Rican Earned Income Tax Credit and the diversion of revenues towards unfunded pension liabilities such that “about 25% of retirees would receive no reduction in their benefits, and an additional 18% of retirees will experience a benefit reduction of 5% or less,” along with a commitment that no retirees “will have a reduction of 25% or more.”<sup>36</sup> Specialized engagement with these plans, as I described in Part III, will be the only way to unpack and evaluate the larger tradeoffs chosen by the Board.

Even as Puerto Rico is a singular case due to the scale of the natural disaster that occurred amidst the fiscal one, as well as for the Island’s compromised legal

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<sup>31</sup> KULIGOWSKI, *supra* note 27.

<sup>32</sup> Kishore et al., *supra* note 28.

<sup>33</sup> Natalie Jaresko, *Examining Challenges in Puerto Rico’s Recovery and the Role of the Financial Oversight and Management Board* (Nov. 7, 2017), [http://democrats-naturalresources.house.gov/imo/media/doc/testimony\\_jaresko.pdf](http://democrats-naturalresources.house.gov/imo/media/doc/testimony_jaresko.pdf) (written testimony of Natalie Jaresko before the House Committee on Natural Resources).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> See Financial Oversight and Management Board for Puerto Rico, *New Fiscal Plan for Puerto Rico: Restoring Growth and Prosperity (certified)* (May 30, 2018), <https://juntasupervision.pr.gov/index.php/en/documents/>; see *id.* at 109 (regarding pensions).

status, the present moment there echoes that of other places where poverty and fiscal crisis have depressed faith in government. The question is what to do about that dynamic.

## II. NEIGHBORHOOD-SCALE DEMOCRACY AS ANTI-POVERTY WORK

Climbing out of the hole of debt, deficits and doubt requires rebuilding the social fabric that underlies democratic participation. Neighborhood-scale work is key to this, both as a means to an end (to organize the population for advocacy around politics and budgets) and as an end in itself (to promote education, sharing and interdependence, social capital).<sup>37</sup> An impressive version of this practice is underway in Lawrence, Massachusetts, a city shaped profoundly by off-island Puerto Ricans.

*El Taller* Workshop in downtown Lawrence, a café and bookshop owned by a local Puerto Rican businesswoman, is a good place to start any story about Lawrence and its practice of democracy. In addition to handmade banana-mango-oatmeal cookies, photography by local teenagers, and frequent community meetings and open mic nights, *El Taller* usually has a copy of the children's book *Last Stop on Market Street*.<sup>38</sup> In the story, an African-American boy named CJ and his grandmother take the bus after church one day to volunteer at a soup kitchen in a poor neighborhood. When they arrive, the little boy asks, "How come it's always so dirty over here?" His Nana replies, "Sometimes when you're surrounded by dirt, CJ, you're a better witness for what's beautiful."<sup>39</sup> That seems true of Lawrence, a city where you cannot miss the hardships, but it is also hard to miss what is beautiful.

This city once famous for its giant mills teeming with diverse immigrants has lost the vast majority of its industrial job base to offshoring. Today, 26% of the population lives under the federal poverty line, despite a very high regional cost of living.<sup>40</sup> The city's central location within New England has made it a distribution hub of heroin and synthetic opioids with a growing and increasingly violent drug trade market.<sup>41</sup> City Hall has gone through several recall campaigns to unseat politicians, and the finances of both the city and the school district have been in

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<sup>37</sup> For a theoretical background on this general idea as applied to community-based lawyering, see, e.g., Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 *ECOLOGY L.Q.* 619 (1992); Luke W. Cole, *Macho Law Brains, Public Citizens, and Grass-roots Activists: Three Models of Environmental Advocacy*, 14 *VA. ENVTL. L.J.* 687 (1995); Stephen Wexler, *Practicing Law for Poor People*, 79 *YALE L.J.* 1049 (1970).

<sup>38</sup> MATT DE LA PEÑA (WITH CHRISTIAN ROBINSON, ILLUSTRATOR), *LAST STOP ON MARKET STREET* (2015).

<sup>39</sup> *Id.* at 20.

<sup>40</sup> QuickFacts: Lawrence, Massachusetts U.S. CENSUS BUREAU, <https://www.census.gov/quick-facts/fact/table/lawrencecitymassachusetts/PST045216> (last visited June 10, 2018).

<sup>41</sup> See Katharine Q. Seelye, *How a 'Perfect Storm' in New Hampshire Has Fueled an Opioid Crisis*, *N.Y. TIMES* (Jan. 21, 2018), <https://www.nytimes.com/2018/01/21/us/new-hampshire-opioids-epidemic.html>.

and out of state receiverships.<sup>42</sup> *Boston Magazine* called Lawrence the “most god-forsaken place in Massachusetts,”<sup>43</sup> seemingly speaking for an outside world that can only see these negative aspects. At an event downtown in the city, I met a suburban woman who rarely ventures into the city and said that most people she knows are too afraid to come into the city at all. Later that day, sitting at *El Taller*, I wished that lady and her friends could see what I saw there: two young parents calling their son “*mi amor*” over dinner, with the father calling out “I love you!” in English as the mother left for work. God has not forsaken Lawrence, it turns out, though it usually seems as though its region has.

Against a backdrop of adversity and stigma, the practice of democracy in the city is precious and defiant. It defies the long odds, the corroded sense of trust in government, the grinding long hours in low-wage jobs, and the damaged self-worth that American culture assigns to the poor. The occupant of the Mayor’s Office today is a result of that improbable persistence: Danny Rivera, the bilingual, Lawrence-born son of a Dominican immigrant, now among the most respected mayors in Massachusetts. For him to be in that seat is a hard-won victory—he is only the second Dominican-American mayor in the city and thus one of the first in the nation. In an exceptional history of Lawrence, author Llana Barber describes the long road to that victory from deeply anti-Latino politics in the city in the 1980s and 90s.<sup>44</sup> The long-time white mayor of Lawrence from 1986-1993, for instance, was elected on a pledge to “give the city back to those who built it”—a clear dog whistle to the remaining white residents resisting the racial turnover in their city.<sup>45</sup> Yet in 1985, the city still “belonged” to its white population—Latinos by then represented more than 16% of the population, but they held only 2% of the public sector jobs in local government.<sup>46</sup> To climb out of the bias against Puerto Ricans and Dominicans and their exclusion from public sector jobs, community leaders like Isabel Melendez built a bilingual services sector that could serve new immigrants in finding jobs and housing, built pan-ethnic coalitions among Latinos and eventually geared that work towards politics.<sup>47</sup>

The non-profit Lawrence Community Works (L.C.W.) has come to be central to on-going organizing work in the city. When the modern leadership started in Lawrence in 1999,<sup>48</sup> they found that a major barrier to coordinated action and

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<sup>42</sup> See Jess Bidgood, *Mayor Faces ‘Rite of Passage’: A Campaign Seeking His Exit*, N.Y. TIMES (Oct. 23, 2015), <https://www.nytimes.com/2015/10/24/us/mayor-faces-rite-of-passage-a-campaign-seeking-his-exit.html>.

<sup>43</sup> See Jay Atkinson, *Lawrence, MA: City of the Damned*, BOSTON MAGAZINE (Feb. 28, 2012), <https://www.bostonmagazine.com/2012/02/28/city-of-the-damned-lawrence-massachusetts/>.

<sup>44</sup> See LLANA BARBER, *LATINO CITY: IMMIGRATION AND URBAN CRISIS IN LAWRENCE, MASSACHUSETTS, 1945-2000* (2017).

<sup>45</sup> *Id.* at 167.

<sup>46</sup> *Id.* at 164-65.

<sup>47</sup> *Id.* at 90-120.

<sup>48</sup> *About: Lawrence Community Works*, LAWRENCE COMMUNITY WORKS, <https://www.lawrencecommunityworks.org/site/about-lawrence-community-works/> (last visited June 10, 2018).

change in the city was “chronic disengagement,” in which it had become, in the words of Executive Director Jessica Andors, “too hard, too scary, too boring and too unnatural for people to find ways to get to know and learn to trust their neighbors, or take part in public life.”<sup>49</sup> As a result, civic life stagnated, caught in a backwater of old, underfunded and understaffed plans for the future.

The organization set out to create a “demand environment for change,” in which residents identify priority problems in their communities, strategize for solutions, and actively engage in pursuit of those ends.<sup>50</sup> For L.C.W., this has meant mechanisms like NeighborCircles, which are a variation on a traditional community organizing house meeting, in which neighbors on a given block have a series of dinner discussions “focused on getting to know each other, identifying common challenges in the area and developing discrete, manageable projects for tackling those challenges.”<sup>51</sup> This type of work by L.C.W.—and partner non-profits like Groundwork Lawrence<sup>52</sup>—has yielded new afterschool programs for kids in the city, redeveloped parks and open space, frequent park and river clean-up parties, a community center, and more. These groups turn out their neighborhood networks for important budget and planning debates at City Hall. Events like NeighborCircles and other community organizing techniques also help build a sense of personal safety in high-crime neighborhoods by helping people recognize more of their neighbors, including young men, so they can walk down the street identifying more people they can trust.

In March of 2017, I was fortunate to attend one of the monthly *Mercados* put on by L.C.W. The *Mercado* is a community organizing tool, and this is how it worked. For one minute, measured by a smiling staff member with a timer and a large bell, we rushed through the room trying to greet as many people as we could. The instructions suggested we could exchange names with a hug, kiss, or handshake, but (since this is a Caribbean town) handshakes were discarded quickly in favor of grinning, kissy hugs all around. At the ring of the bell, we returned to our standing circle, and each person was invited to say something “*Nuevo y Bueno*.” We heard from a young man who had an admissions interview set for college, a lady whose arthritis was mild enough today to make it to the meeting and a man whose mother got a remission prognosis for her cancer. When a little girl named Angela, wearing a school uniform and a flowered headband, announced that it was her birthday, the group burst into song. Everything was bilingual—people practiced their second language by translating for themselves, or others did it for them.

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<sup>49</sup> Jessica Andors & William J. Traynor, *Network Organizing: A Strategy for Building Community Engagement*, SHELTERFORCE (March 1, 2005), <https://shelterforce.org/2005/03/01/network-organizing-a-strategy-for-building-community-engagement/>.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> See *About Groundwork Lawrence*, GROUNDWORK LAWRENCE, <https://groundworklawrence.org/about> (last visited June 10, 2018).

The next stage, *El Mini Mercado*, worked to help soften the edges of poverty. *El Mini Mercado* helps create networks for people to trade skills and depend on each other when they cannot afford to pay in cash for all the things they need. The organizers invited people to offer something they could do for others or something they needed help with. Offers came in for things like help with making a resume or babysitting. Needs came in for help starting a new business. The idea is for people to help each other: I can repair your sink if you bring my son when you walk your kids to school on Tuesdays; if you check on my elderly mom during your lunchbreak, I'll get your kids to soccer practice after school.

At the last and biggest stage of the evening, community members suggested discussion topics and broke out into groups to tackle them. One group embarked on planning a public march to defend undocumented immigrants. Another gave an overview of the organization's workforce development program. As each group broke out into separate meeting spaces, the ceiling was thumping with the sounds of a teen program practicing a dance show upstairs.

Now all this sounds sweet enough, but relatively insignificant too. But the voices from the breakout session that I attended, which was focused on public safety in the city, make plain how shared community dialogue can shift towards government activism. We broke out into a room with a white board, in which a very poised Dominican-American community member—a woman I could easily see running for city council one day—facilitated and took notes on our discussion.

Residents began by venting some of their fears and experiences: "I lived in New York City and then in San Juan. They are a lot tougher than Lawrence. But in small communities, everyone knows when big things happen. But since 2014, I've seen how bad things are emerging here. Random drive by shootings! I have to pick my son up and tell him to stay inside. I say 'I'll pick you up' from his friend's house after school. I just don't know, I just don't know." Or this: "I had to purchase a cell phone for my kids so I'd always know where they are. You have to teach them things when they are too young to hear it. I taught mine never to run if he hears shots. Just lay down on the ground."

They articulated questions of equity in public service levels between the poorer north side and the more middle class south sides of the city, and between Lawrence and a neighboring suburb: "*Why are there such dramatic safety differences when you cross the bridge from South into North Lawrence? South Lawrence has traffic controls around the schools.*" Affirming nods moved across the room. "*There is a big imbalance here. I've been here 37 years. It's the worse that it's been here in many areas. Is it because of racism? Or is it about being poor versus being rich? I think that's the imbalance. In North Lawrence the police are just not here. There are a lot of drugs near a big school by my house but you never see the police here.*" These conversations were not just about public safety: "*There is so much snow in this city! They don't clear the streets! The crossing guard had to help the kids climb over the mountain of snow on the sidewalk. But when you cross into Methuen [a neighboring suburb], the snow is gone. I don't know where they put it all! In their pockets?!*"

The dozen or so participants articulated specific demands and shared advice about how to participate in city politics. “The head of a teenager washed up in the river, separated from his body. One other high school kid is arrested. He couldn’t do that crime alone. We need more of an explanation of what happened. My son goes walking to school every day alone. We need the full story from law enforcement!” Specific suggestions emerged: “You must call your city council members. They’re supposed to answer their phones. When I call mine, he has contacts in the city. When people call them, they can ask for more attention for their district. They want to know. There is a lot you can do—clean ups in your area, activities in your neighborhood.” One woman shared the anonymous tip line for reporting crimes to the police, and others focused on local politics. “In September we have a mayoral race. We need to have a town hall about public safety here—a meeting or debate about public safety.”

Speakers asserted control of their situation, putting themselves in a position of leadership and authority for their city’s conditions. “*Who is responsible for our public safety problems?*” The moderator made a list on the white board: the police department, parents, society, the mayor. “*It’s our responsibility to take our city back.*”

That is what the practice of democracy looks like. Ordinary neighbors—many of whom had never seen each other before—went from singing happy birthday and having dinner together to sharing information about how to communicate with politicians. They lay down some of the burdens of fear and bitterness, then began mapping a strategy for political engagement.

All of this work helps to repair and improve government. It helps people understand what government does now, what it would need to do more of, what it perhaps cannot do. It helps people substitute government and take back those things that can be done by community members. We are now decades into social science research demonstrating that when people are engaged with the public sphere in this way, they appreciate it more. If a group of neighbors builds a park and helps maintain it, they will defend it—whether from austerity cuts or drug dealers. But those people must reconnect to each other, taught to trust each other again.

That is the funny thing about government. When we participate in it, shape it, supplement it, we might actually need less of it. When people withdraw—ceding power to bureaucracies or oversight boards—they will get less even as they need more.

Puerto Ricans have their own evidence of this. *Casa Pueblo*, represented in this symposium by Dr. Massol<sup>53</sup>, managed to transform a scientist-led effort to block open-pit mining into a major regional hub of art, culture, economic opportunity, forest preservation, and now, disaster relief and renewable energy.<sup>54</sup> The

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<sup>53</sup> Arturo Massol Deyá, *supra* note 4.

<sup>54</sup> Andrea Moya, *Casa Pueblo Taps Solar Power, Diaspora to Help Communities*, CARIBBEAN BUSINESS (Oct. 5, 2017), <http://caribbeanbusiness.com/casa-pueblo-taps-solar-power-diaspora-to-help-communities/>.

organization's story of evolving past their first environmental "rally" with an audience of one person into a jewel of neighborhood-scale democracy and empowerment is local evidence of how to rebuild civil society.<sup>55</sup> The mantra of the environmental justice movement, "We speak for ourselves," is alive and well in their model, according to which Puerto Rican communities must determine their own path, beyond dependence on multinationals or the U.S. federal government. The scale of their success at land conservation and environmental education shows that a network founded on trust, interdependence, and community can form the foundation for activism on anything else. Joy and connectedness—not drudgery—is the work of change.

### III. INSTITUTION-SCALE PARTICIPATION

Imagine, for a moment, that we are looking at a single conference room table where the assembled will make a plan for a chronically poor jurisdiction that has run out of money and cannot pay its debts. (It is not this simple in real life, I know, but bear with me for a moment to picture this scenario)

The way we usually experience, discuss and manage a bankruptcy in a broke mainland city, that table has four or five chairs. One belongs to the highest elected leader subject to the intervention—usually the mayor, but in Puerto Rico's case, Governor. The second chair is for an expert on fiscal management, a receiver or emergency manager, who usually has no local ties. In Puerto Rico's case, that seat would go to Natalie Jaresko, the Executive Director of the P.R.O.M.E.S.A. Board. In general, this figure is as a technician of complex budgeting, public finance and restructuring, and need not bring special knowledge of the particular community.

The third chair at this table goes to the lawyer representing the largest creditors and holding a stack of contracts—a figure who typically will fight for every marginal return to their clients even when it endangers the long-term fiscal health of the government. In reality, there are dozens of these lead lawyers for big Puerto Rican creditors, and they are fighting through lobbyists in Washington D.C. as much as in court. The most aggressively lawyered are the hedge fund creditors who bought Puerto Rican debt at a steep discount and have been disappointed to see their odds for quick, dramatic returns reduced by the bankruptcy filing.<sup>56</sup> The fourth chair is a bankruptcy judge, the overloaded soul charged with finding a path through the conflict. If we are imagining Detroit or Puerto Rico, we will need a fifth chair for a billionaire investor—representing the people in both places (such as John Paulson in Puerto Rico) who have embraced the combination of a big investment challenge and a good land bargain. A figure like this has a wallet

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<sup>55</sup> ALEXIS MASSOL-GONZALEZ ET AL., *THE EVOLUTION OF CASA PUEBLO, PUERTO RICO: FROM MINING OPPOSITION TO COMMUNITY REVOLUTION* (2008).

<sup>56</sup> Michael Corkery & Mary Williams Walsh, *Message of Puerto Rico Debt Crisis: Easy Bets Sometimes Lose*, N.Y. TIMES (May 4, 2017), <https://www.nytimes.com/2017/05/04/business/dealbook/puerto-rico-creditors-hedge-funds.html>.

big enough to aggregate a real estate portfolio of relatively cheap land that is so extensive that it might turn a big risk into big gold.<sup>57</sup>

So that's our typical table: the politician, the receiver, the creditor, the judge and the investor. Each of these representatives can be better or worse at their job. They could end up being deaf to human need in the troubled jurisdiction or quite concerned with it. They might be more or less self-interested, more or less creative at making hard things work, more or less effective at the art of communication during times of political controversy, more or less capable of genuine cooperation. They could get more or less lucky with factors in the general economy beyond their control.

But even at their very best, even at peak integrity with a relentless focus on finding the public interest in a thicket of tradeoffs, this group cannot give a city—let alone a whole state—a fresh start. Whether the public has a seat at that table or not, its interests are central to achieving the goal of the assembled: to ensure a recovery for the debtor government, so it can pay as much of its debts as possible while still delivering services sufficiently adequate to stabilize public revenues in the future. The general public is a necessary counterweight to the short-term interests of creditors, and it may even be critical to protecting the creditors' long-term interests. The public is also critical to the receiver and the bankruptcy judge, who will not fully appreciate what matters most to people for their public sector—which services or assets can be cut or sold and which should not be. The billionaire will need the public too, whether he likes it or not, because they are the neighbors and neighborhood to his investment and realistically he will want their cooperation for his investments to succeed at least cost. Even the elected officials, who may or may not enjoy strong approval ratings, need the public to put the right hard choices on the table and take the wrong ones off. Democratic participation makes all the other peoples' jobs harder, but it makes their work more likely to matter.

If the process of fiscal management degrades rather than rebuilds faith in government, it cannot make lasting change. A fiscal oversight board is not in a position to solve poverty or to educate the population to overcome a skills gap. They are there to improve the spreadsheets, by cutting spending, restructuring debt, and restoring access to investment capital for necessities like infrastructure. This can be helpful, but it can also recreate the same problems that brought on Puerto Rico's current crisis: a supply-side economic development model built on tax relief, not skills and education, in which the tax base relies too much on low-wage workers' paychecks and consumer spending and too little on revenue from employers. The tax, spending and oversight apparatus of government will eventually resume power, and the public needs leaders with a plan for what to do about population loss and poverty—those destroyers of even the tidiest spreadsheets.

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<sup>57</sup> See Michelle Wilde Anderson, *Needing and Fearing Billionaires in Cities Abandoned by Wealth*, 35 YALE L. & POL'Y REV. 235 (2016).

So the question becomes: how can the general public influence the decisions made at this table, even when they are not given a chair? The law, in Puerto Rico's case as in others, is not going to help. Here too, it is the practice of democracy that is the key, and it requires something like self-appointed participatory budgeting.

The first step is to inventory and observe the public sector as it was before the crisis, and to think about those functions that are too critical to cut or liquidate. Circles of residents—whether through NGOs, student groups, or parent-teacher organizations—need to become specialists in one of these functions. It is like an adoption process, in which specialization in that government function helps understand its management, its budgets and its possible changes under oversight. Protests and other advocacy efforts to protect those expenditures and investments help force “tough choices” into the public sphere where they belong—identifying those institutions that are too treasured, or those expenditures that are too critical to the safety net. This work must be done school by school, park by park, sector by sector.

Everyone need not and should not agree on which expenditures are most important, of course. A large, populous place like Puerto Rico will have dozens of small efforts that form around different pieces of the public sector. In Detroit, a coalition of interests gathered around the Detroit Institute of Arts (DIA) art collection, which they felt was too precious to liquidate; this group ended up striking a deal with those who rallied to protect the city's modest but underfunded pension contracts. As a result, the art collection and the pensions ended up protected to a greater degree in Detroit's bankruptcy than the city government's downtown land parcels, which were therefore distributed to creditors. In Philadelphia and other cities, the public rallied around the public library system when it was threatened with radical downsizing. By contrast, in Benton Harbor, Michigan, residents did not mobilize fast enough to organize around a public park along a waterfront before a land swap transferred that precious parcel to a private golf course.

This inventory process is underway in Puerto Rico, where a coalition snapped into action fast enough to block a version of the P.R.O.M.E.S.A. legislation that permitted a massive land sale of the Vieques Wildlife Refuge.<sup>58</sup> Similar momentum is gathering around public education, which faces deep cuts. More schools remain slated for closure, but the Board's centralized decision-making process will not be able to determine what specific closures would mean in terms of commute times or community life. Given population loss, closing schools has a fiscal logic to it (fewer kids, fewer schools) that can only be refuted if a block of activists takes a stand for specific treasured schools or the principle of smaller, dispersed rural schools in general.

Within the UPR, students and faculty are well down the path of this work. They have elevated and surfaced—and must continue to do so—critical questions about the path of public higher education on the island. Their protests in May of

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<sup>58</sup> See *UPDATE: You Helped Prevent Politicians from Selling off Vieques National Wildlife Refuge in Puerto Rico*, WILDERNESS SOCIETY (May 20, 2016), <https://wilderness.org/blog/update-you-helped-prevent-politicians-selling-vieques-national-wildlife-refuge-puerto-rico>.

2017 generated extensive news coverage, including in the *New York Times*, which helped to educate the mainland public about the Island's pride in the university, and the university's role in Puerto Rico's 20<sup>th</sup> century modernization. The student activism that brought in national media helped raise mainland awareness about the 50% Pell grant coverage at the UPR—surely one of the highest rates of poverty for a major university. That suggests that the university is doing the hard work of social mobility, by getting hundreds of thousands of low-income Americans a college degree. I am not in a position to judge whether it was right to shut the university down during those protests, or for how long to do so. Instead, what I took from these protests—from the students who shut the university down, from the public leaders who spoke out against the savage proposed cuts and from the law students who sued to reopen it—was that this university mattered, and that it mattered in two ways: its quality *and* its affordability. During a period governed by outsiders, as is the case with Congress's and the Board's outsized role here, resident advocates have to teach outsiders that your culture of public higher education is closer to that of California than to that of Arkansas. They have to explain why Puerto Rico does not have a student debt crisis akin to that on the mainland, and why they wish to keep it that way through much lower tuition rates. They have to teach the P.R.O.M.E.S.A. Board that this institution is critical to training Puerto Ricans for the 21<sup>st</sup> century economy and thus keeping Puerto Rico solvent going forward.

UPR's progress in performing that popular oversight and advocacy work is evinced in the significant reductions in cuts to the UPR budget between the March 2017 proposed budget and the eventual cuts adopted in the May 2018 budget. Even if the university cannot manage to bring these cuts down further, its advocates will be critically important at plunging more deeply into the university's budget and facing the hard questions about how—and where not—to cut within the UPR system. The Board's slide deck explaining these cuts provides a framework, but its thin information is an invitation for more involvement and activism about what this fiscal plan for the university will really mean.<sup>59</sup> Making progress at reducing—or at least steering the implementation of—seemingly immovable budget cuts is sure to be time-consuming and frustrating, but this kind of work is the only way to minimize the pain and setbacks represented by austerity cuts. Even if it yields few returns now, it can train and surface the next generation of leadership at the university.

Puerto Rico is building up a list of other examples like this, where people have mobilized even when the formal role for participation was weak or non-existent. The Vieques asset sale provision demonstrated this, as did the Jones Act Waiver in the fall.<sup>60</sup> Whistleblowers inside and out of government managed to expose the

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<sup>59</sup> See NEW FISCAL PLAN FOR UNIVERSITY OF PUERTO RICO, AS CERTIFIED BY THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO (April 20, 2018), <https://juntasupervision.pr.gov/index.php/en/documents/>.

<sup>60</sup> Niraj Chokshi, *Trump Waives Jones Act for Puerto Rico, Easing Hurricane Aid Shipments*, N.Y. TIMES (Sept. 28, 2017), <https://www.nytimes.com/2017/09/28/us/jones-act-waived.html>.

Whitefish contract for the sham that it was.<sup>61</sup> From the artist who repainted the Old San Juan flag door black to Lin Manuel Miranda rhyming for recovery funds on the *Colbert Report*, from the mass protests in Washington D.C., New York City, and Florida to social media campaigns to disseminate P.R.O.M.E.S.A. news, activists have refused to let Puerto Rico be invisible. Public oversight can—and must—ensure the process of restructuring is never delivering favors or cutting the wrong things, but to do so, the public must remain involved.

Mobilizing mainland Puerto Ricans, especially in purple states or cities, is part of this work. The diaspora may mark a loss for cultural heritage and family ties, but it has the potential to preserve the road back home, if mainland Puerto Ricans harness their electoral strength. Longing for the Island is powerful among mainland Puerto Ricans, as U.S. Supreme Court Justice Sonia Sotomayor described directly, and then embodied herself in her book *My Beloved World*. Remembering her childhood in Santurce, she wrote:

We were in a city, but it seemed to teeter on the edge of dissolving into nature. Vines snaked under iron fences and up balustrades. Chickens scabbled under hibiscus bushes and bright yellow canario flowers. I watched the afternoon rains pour down like a curtain enclosing the balcony, rutting the street below with muddy streams, pounding on the corrugated roofs and wooden walls until Abuelita called me inside to a treat for merienda—maybe a tembleque, a gelatin made of coconut milk and sweet condensed milk, or fruits that I'd never seen in New York: guavas with their sharp perfume, quenepas with pits as big as grapes and a thin layer of featherlight flesh that puckered your mouth when you sucked on it, and mangoes of a melting sweetness unlike any I had tasted back home.<sup>62</sup>

The loyalty that comes from this longing—whether from a luminary like Justice Sotomayor or simply an average voter—is a source of power. Puerto Ricans can exert influence in blue states, like New York and Massachusetts, but also in purple states like Pennsylvania. Florida is the biggest prize of all: Trump took the state's huge bundle of twenty-nine electoral college votes with just a 100,000 vote lead over Hillary<sup>63</sup>—not so many more voters than the 56,000 Puerto Ricans that have settled in Florida just in the months since Hurricane Maria.<sup>64</sup> The total number of Puerto Ricans in Florida alone passed one million in 2014 and is substantially higher today.<sup>65</sup> Puerto Ricans can have tremendous power over United States presidency if they claim it. A serious mainland statehood movement, for instance,

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<sup>61</sup> Frances Robles & Deborah Acosta, *Puerto Rico Cancels Whitefish Energy Contract to Rebuild Power Lines*, N.Y. TIMES (Oct. 29, 2017), <https://www.nytimes.com/2017/10/29/us/whitefish-cancel-puerto-rico.html>.

<sup>62</sup> SONIA SOTOMAYOR, *MY BELOVED WORLD* 32-33 (2013).

<sup>63</sup> *Election 2016: Florida Results, President*, N.Y. TIMES (last updated Aug. 1, 2017), <https://www.nytimes.com/elections/results/florida>.

<sup>64</sup> Martín Echenique, *Exodus: The Post-Hurricane Puerto Rican Diaspora, Mapped*, CITYLAB (Mar 13, 2018), <https://www.citylab.com/equity/2018/03/exodus-the-post-hurricane-puerto-rican-diaspora-mapped/555401/>.

<sup>65</sup> Krogstad et al., *supra* note 13.

could benefit the island's politics and budgets even for pro-Commonwealth or pro-independence voters, as members of Congress who reject the possibility of Puerto Rico as the fifty-first state look for other ways to court and pacify the mainland electorate. This leverage is amplified by the mixed partisanship of Puerto Ricans: with politics that do not track the Democratic and Republican party divide, Puerto Ricans tend to be "up for grabs" by the parties in ways that offer leverage if they can bring their tradition of turnout to the mainland—including the culture of visibly celebrating election days in ways that can draw attention to Puerto Rico's political power.

In particular, mainland Puerto Ricans and their allies must hold the members of the Congressional Committee on Natural Resources, and especially U.S. Representative Rob Bishop (R-Utah, Chair) accountable when they assume the role of speaking for the Island's largest creditors. In a March 30, 2018 letter to the Board reported in the press, Representative Bishop censured the Board for failing to do "enough" to negotiate with creditors on the debt restructuring and failing to "enforce much-needed structural reforms in Puerto Rico."<sup>66</sup> Governor Rosselló accused Representative Bishop "of turning 'back the clock many decades to a time when the federal government simply imposed its will' on the U.S. territory," by "elevat[ing] concerns of bondholders on the mainland above concern for the well-being of my constituents."<sup>67</sup> Mainland Puerto Ricans must become activists in this dialogue, organizing for consequences where Congress presses for more extreme austerity measures than even its Board believes are sustainable.

Puerto Ricans and their allies must also continue to promote an alternative economic development vision, beyond the tax incentives that have long tried to solve economic problems by attracting individuals and businesses to use the Island as a tax shelter. Puerto Rico needs to double down on those models—like community-focused agriculture<sup>68</sup>—that have pursued sustainable economic growth to build wealth for its people, not outsiders bringing in low-wage jobs without meaningful tax revenue. The Puerto Rican legislature will have to decide what it wishes to do with and for the likes of Halsey Minor, a businessman who topped the 2013 raking of "the Top 500 Delinquent Taxpayers in California" before he filed for a Chapter 7 bankruptcy.<sup>69</sup> Commenting on his recent relocation to Puerto Rico—along with other blockchain and cryptocurrency owners—in order to capture tax incentives and low post-storm real estate values, Minor said this of Hurricane Maria: "[w]hile it was really bad for the people of Puerto Rico, in the

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<sup>66</sup> Nick Brown, *Puerto Rico Governor Slams Congressman over 'Dictatorial' Letter*, REUTERS (Apr. 2, 2018), <https://www.reuters.com/article/us-puertorico-debt-letter/puerto-rico-governor-slams-congressman-over-dictatorial-letter-idUSKCN1H9jY1>.

<sup>67</sup> *Id.*

<sup>68</sup> See e.g., ORGANIZACIÓN BORICUÁ DE AGRICULTURA ECOLÓGICA DE PUERTO RICO, <http://organizacionboricua.blogspot.com/p/quienes-somos.html> (last visited June 10, 2018).

<sup>69</sup> *Halsey Minor's \$20 Million Mansion Sells for \$4 Million Less*, SOCKETSITE (July 15, 2016), <http://www.socketsite.com/archives/2016/07/halsey-minors-20-million-mansion-finally-sells-for-a-4-million-loss.html>.

long term it's a godsend if people look past that."<sup>70</sup> That statement speaks volumes about how this new round of mobile capital views itself—kingmakers for the people of Puerto Rico, even as they promise nothing more than a few dollars trickling into the low-wage service economy. With Maria's dead turning in their graves, Puerto Rico's living should ask whether they wish to be a godsend for that kind of person's tax return.

The Whitefish debacle shows how this is an anti-corruption mission as much as anything. At the risk of piling on with a terrible mixed metaphor, keeping foxes out of a henhouse requires not being an ostrich. This will be especially critical with respect to PREPA, a public corporation for which some degree of privatization is probably inevitable. Privatization is not always good or always bad, but one thing is for sure: it is never better than its contracts. It is critical to have think tanks and experts police privatization contracts' details, making sure that critical reinvestment projects are not kickbacks for special interests, do not rely on impossibly rosy cost estimates, and provide the public sector a competitive mix of renewable energy sources that will make Puerto Rico more energy independent and more resilient to climate change. That is to say: "[n]o more Whitefishes" is a practice, not a slogan.

Those who take on a watchdog function should consider this starting point: restructuring, and fiscal oversight in general, is not inherently good or bad. To be sure, it can be undemocratic, but so too it can be stabilizing and necessary. Any judgment of that process in the end will depend on its outcomes, its winners and its losers. It is hard to see a path in which Puerto Rico did not need to write down its debt, and, in this political moment, it would be infeasible for that to happen without a period of spending controls. By staying engaged in the bankruptcy and budgeting processes, citizens can pay attention to the details, including the good news where it is to be found. They will be in a position to give credit where credit is due, reinforcing Board members' will to stand up to bondholders' demands for unreasonable cuts. So too, they can support the Board and Puerto Rico's elected leaders at standing up to representative Bishop and other members of Congress who believe that Puerto Rico can cut its way to prosperity.

## CONCLUSION

The current moment on the Island will require rebuilding civil society and remaking government, not giving up on it. When democracy is blocked in one channel, citizens have to open new ones. As the Spanish poet Antonio Machado wrote in 1912, during an era, like our own, that was soaked in inequality and concentrated political power:

Caminante, son tus huellas  
el camino y nada más;

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70 Nellie Bowles, *Making a Crypto Utopia in Puerto Rico*, N.Y. TIMES (Feb. 2, 2018), <https://www.ny-times.com/2018/02/02/technology/cryptocurrency-puerto-rico.html>.

caminante, no hay camino,  
se hace camino al andar.<sup>71</sup>

We make the road by walking.

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<sup>71</sup> ANTONIO MACHADO, ERA UN NIÑO QUE SOÑABA: LOS MEJORES POEMAS PARA NIÑOS DE ANTONIO MACHADO 69-70 (2014).