

**DECONSTRUCTING SOVEREIGNTY: THE VALIDITY OF THE
STATUS-DRIVEN MINDSET AS SEEN THROUGH *SOBERANÍAS
EXITOSAS: SEIS MODELOS PARA EL DESARROLLO ECONÓMICO
DE PUERTO RICO* BY ÁNGEL COLLADO SCHWARZ**

ARTICLE

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INTRODUCTION

PUERTO RICO IS IN AN ECONOMIC CRISIS. ON THIS MATTER THERE IS CONSENSUS. The global economic downturn has not been kind, exacerbating many problems to emergency levels. Like any issue with society-wide impact, the issue has become a new front of discourse for the Island's political establishment. What differs from strata to strata in the political spectrum is the solution proposed.

To speak of Puerto Rican political discourse is to speak about the question of status.¹ No other topic comes close to its importance. This topic's influence is so

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¹ Status, as defined in the political discourse of Puerto Rico, refers to the competing formulas that Puerto Rico should use to address its current political relation with the United States. The most commonly articulated formulas, that is, the ones represented by the main political parties, are as follow: Complete independence from the United States as a distinct political entity, a continuation of

pervasive that all three of the major political parties on the Island are organized around a particular way of resolving it. Its dominance of party-political speech has stood unchallenged for decades.

Even outside traditional political discourse, that is to say, the discourse originating from the established parties, status is a common topic. In his book *Soberanías exitosas*,² Ángel Collado Schwarz confirms this point by making the question of status the major hurdle Puerto Rico has to overcome in order to become successful. His reasoning is thus:

[Puerto Rico] must attain a vigorous economy . . . and be able to exercise the powers that sovereignty brings in order to embark on a new economic model The current political status prevents the [I]sland from negotiating economic and commercial treaties with other countries, participating in international forums, and being able to use the most modern and efficient merchant marines.³

He goes on to contrast the limitations of the current system with the success of six nations he identifies as models for Puerto Rico, all sovereign and selected because of their similarities in terms of size, population, or history. The nations are Singapore, Slovenia, Ireland, Israel, New Zealand, and Estonia. Sovereignty, for the author, is the deciding factor for the prosperity of Puerto Rico. It is not only imperative but essential that it achieves a resolution of the question of status. He writes:

Resolving the problem of its political status is indispensable for Puerto Rico to be able to maximize the use of its extraordinary human resources. A country based solely on dependence cannot face the 21st century. The key to Singapore, New Zealand, Israel, Ireland, Slovenia, and Estonia's success has been their formidable human resources, which, combined with the necessary sovereign powers, have allowed them to establish goals, long-term plans and strategic alliances.⁴

While Collado Schwarz is not alone in this kind of reasoning, his book provides us with the opportunity to deconstruct the traditional argument of status. *Soberanías exitosas*, for all its good qualities, is exemplary of the mindset that permeates political discourse on the Island. The question of status is single-issue politics at its worst: a monolithic ideological construct that accepts no counter-argument, since it conditions the discussion of everything else. Any comment about the future direction of Puerto Rico or its economy is viewed through this

the current Free Associated or Commonwealth model, with or without some modifications, or full incorporation into the United States as the 51st state of the Union. These formulae only represent the most commonly remarked versions, and might be seen as points in a continuum rather than distinct entities.

2. ÁNGEL COLLADO SCHWARZ, *SOBERANÍAS EXITOSAS [SUCCESSFUL SOVEREIGNTIES]* (2d ed. 2009).

3. *Id.* at 11 (translation ours).

4. *Id.* at 13 (translation ours).

prism. To advocate for greater appropriations of federal funds for the Island is to “attack the dignity of the [P]eople” by making them dependent on the “federal dole”, which in turn is the “source of many of the social ills that affect the [I]sland.”⁵ To continue in the current status is equally undesirable, since Puerto Rico will never be able to integrate fully with the United States because “it is a different nation with a different culture, language, and idiosyncrasies.”⁶ It is impossible to have a productive discussion with this kind of mindset because it accepts no deviation from its predisposed path. If there is no way to repudiate the argument from within the mindset, what remains is to question its validity in the first place.

The purpose of this article is not to attack Collado Schwarz or his work in *Soberanías exitosas*, but to question the validity of his conclusions by examining the mindset that led to his thesis. By deconstructing the argument to its component parts, it will be possible to view *Soberanías exitosas* not as an isolated text, but as indicative of a wider train of thought. In the end, the question this article intends to answer is not whether the question of status impedes Puerto Rico’s economic development options, but whether the supremacy of status in political discourse effectively precludes any discussion of economic programs and development strategies that exist outside its sphere of discourse and influence.

I. MODEL COUNTRIES

As mentioned previously, Ángel Collado Schwarz structures *Soberanías exitosas* around six case studies of nations he identifies as models for a sovereign Puerto Rico’s development. The nations chosen, Singapore, Slovenia, Ireland, Israel, New Zealand, and Estonia, share population figures or territorial dimensions similar to those of Puerto Rico but have widely different stories, be they historical or economic.⁷ The most important aspect they share, according to Collado Schwarz, is sovereignty over their own affairs, and it is this sovereignty that he identifies as instrumental in being able to effectively implement economic and development policy.⁸ In order to examine the validity of this thesis, each case study will be examined individually to determine two mostly intertwined points: first, whether sovereignty is as indispensable in the implementation of the quoted strategies as it is made out to be, and second, whether there is anything that would prevent Puerto Rico from following the models discussed without a fundamental change in its political status.

5 *Id.* at 10-11 (translation ours).

6 *Id.* at 11 (translation ours).

7 *Id.* at 8 (translation ours).

8 *Id.* at 14 (translation ours).

A. Singapore

Singapore is the smallest nation discussed in *Soberanías exitosas*, with a total geographical area of only 697 square kilometers. It is also by far the wealthiest, with an estimated gross domestic product (GDP) (purchasing power parity or PPP) for the year 2009 of 243.2 billion dollars, which translates into a per capita distribution of \$52,200 for its 4,701,069 inhabitants.⁹ Almost thirteen times smaller than Puerto Rico, Singapore has been able to achieve more than triple its GDP.

Collado Schwarz identifies many examples which can serve as models for Puerto Rico and concludes the discussion with two major ideas that serve as an outline for our discussion, which are:¹⁰

1. Transforming the Puerto Rican government into an enterprising and efficient entity
2. Economic diversification, both in local and international terms.

The first point refers to the way Singapore's government has been able to adapt quickly and in a concerted manner to changing conditions both inside and outside Singapore. The only way to achieve an enterprising and efficient government is through the recognition that the needs of the populace outweigh the political differences between the elected members of government. *Soberanías exitosas* touches on this point when, just after stating the idea mentioned above, it conditions it by saying that such a change would require "an extraordinary change in Puerto Rican political culture."¹¹ Effective governance is essentially a political issue, since no amount of laws or rules can substitute commitment to bettering the general welfare. On this point, Lee Kuan Yew, Prime Minister of Singapore from its independence in 1965 to 1990, comments in his book *From Third World to First*¹² that "[w]e cannot afford to forget that public order, personal security, economic and social progress, and prosperity are not the natural order of things, that they depend on ceaseless effort and attention from an honest and effective government that the [P]eople must elect."¹³ As the saying goes, you can lead a horse to water, but you can't make it drink. In this case, no amount of government regulation can define the aims that a party or candidate will strive for once elected. Only a change in priorities can do that, and these priorities are not dependent on the sovereignty of a nation or lack thereof.

⁹ See CIA – THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/> (last visited Nov. 3, 2010).

¹⁰ See COLLADO SCHWARZ, *supra* note 2, at 35.

¹¹ *Id.* (translation ours).

¹² LEE KUAN YEW, *FROM THIRD WORLD TO FIRST* (2000).

¹³ *Id.* at xiii.

The second point, however, deals with specific policies that the government can implement. *Soberanías exitosas* identifies two major limitations of the current system that prevent Puerto Rico from implementing Singapore's model. The first is Puerto Rico's inability to negotiate trade agreements with other nations. The second is the required use of the U.S. Merchant Marine for all commerce between Puerto Rico and the United States.

With regard to Puerto Rico's inability to negotiate trade agreements, the above limitation is true, but only to a specific extent. Due to the fact that Puerto Rico falls under the authority of the U.S. Constitution, its ability to negotiate treaties is limited by Article I, Section 8, which states that Congress shall have the power to "regulate Commerce with foreign Nations."¹⁴ What the above limitation does not take into account is that this is not a specific limitation of Puerto Rico's sovereignty, but in fact a general prohibition on every state in the United States. Moreover, states are only prohibited from negotiating trade agreements under the precept that no individual state in the Union should have an unfair advantage over another when they all act in concert by way of the federal government. In actuality, many states in the United States have informal agreements with other nations to promote trade between them,¹⁵ as well as export centers that facilitate the exportation of local goods to foreign nations through government-assisted programs.¹⁶ On a more concrete level, Puerto Rico is included in trade agreements signed by the federal government, which include free trade with Mexico, Canada, Central America, and many other nations. Seeing as Puerto Rico has all the powers commonly exercised by a state of the Union,¹⁷ it stands to reason that it could emulate, or at least benefit, from one of the programs or treaties mentioned here. It is not bereft of options.

With regard to the U.S. Merchant Marine, *Soberanías exitosas* is making reference to the provisions of the Merchant Marine Act¹⁸ that apply to Puerto Rico, namely that "transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via foreign port" must be made on vessels "wholly owned by citizens of

¹⁴ U.S. CONST. art. I, § 8.

¹⁵ The Massachusetts Office of International Trade and Investment [hereinafter MOITI] has over twenty "country agreements" in place with foreign nations which entail "memorandum[s] of understanding . . . aimed at promoting bilateral trade and investment" as well as "information and academic exchange." MASSACHUSETTS OFFICE OF INTERNATIONAL TRADE AND INVESTMENT, COUNTRY AGREEMENTS (2010).

¹⁶ See MASSACHUSETTS EXPORT CENTER, <http://www.mass.gov/export> (last visited Feb. 21, 2011); *Exporting Assistance*, ENTERPRISE FLORIDA (Nov. 3, 2010), <http://www.eflorida.com/ContentSubpage.aspx?id=466>.

¹⁷ See David M. Helfeld, *How Much of the United States Constitution and Statutes are Applicable to the Constitution of Puerto Rico?*, 110 F.R.D. 449 (1985).

¹⁸ Marine Merchant Act of 1920, 46 U.S.C. §§ 50101-58109 (2006).

the United States for purposes of engaging in coastwise trade.”¹⁹ The problem with this line of thinking is that it fails to take into account that this prohibition only applies to goods shipped between Puerto Rico and the United States. The problem is not that Puerto Rico must use U.S. ships, at greater cost, to ship things to and from the United States; the problem is that public policy has allowed U.S.-Puerto Rico trade to account for almost seventy percent of all exports and fifty percent of all imports to the Island.²⁰ Given the possibility of trade discussed above, and the fact that goods entering or leaving for ports not under the coastwise laws of the United States do not have to use the U.S. Merchant Marine, this seems more a failure of government policy than the outcome of a lack of sovereignty.

Both of the suggestions that *Soberanías exitosas* extracts from the Singapore model, an enterprising and efficient government and economic diversification, are well within what Puerto Rico is currently able to achieve. It is not a question of lacking the legal powers to implement these suggestions. The first suggestion hinges on the electorate and the elected dedicating themselves to the task of providing a government that fits the Island’s needs, which is achievable under Puerto Rico’s current political system if not for its political culture, while the second suggestion needs that the government lay out clear economic goals and work towards them. Without going into the merits of the legislation itself, the existence of the Emergency Fiscal Stabilization Plan, commonly referred to as *Ley 7*, is proof that the government has the power to legislate far-reaching economic policy.²¹ The use of the U.S. Merchant Marine, likewise, is only an obstacle as long as most of the trade Puerto Rico conducts is aimed primarily at the U.S. market, while the lack of treaty making powers has not stopped states like Massachusetts and Florida from entering into treaty-like relationships with other nations. A dearth of imagination, and not powers, seems the likely culprit here.

B. Slovenia

The first of the former Soviet Bloc countries mentioned in *Soberanías exitosas*, Slovenia is quite a bit larger than Puerto Rico, with an area of 20,273 square kilometers for its 2,003,136 residents.²² Its economic output is similar to

¹⁹ 46 U.S.C. § 55102.

²⁰ Compare UNITED STATES DEPARTMENT OF COMMERCE, U.S. TRADE WITH PUERTO RICO AND U.S. POSSESSIONS, 2009 and JUNTA DE PLANIFICACIÓN DE PUERTO RICO, SELECTED ECONOMIC INDICATORS OF PUERTO RICO, http://www.jp.gobierno.pr/Portal_JP/LinkClick.aspx?link=IndicadoresEconomicos%2fIndicadores+Economicos+Seleccionados+con+charts.xls&tabid=185&mid=712 (last visited Feb. 21, 2011).

²¹ Special Act to Declare a State of Fiscal Emergency and to Establish a Comprehensive Fiscal Stabilization Plan to Salvage the Credit of Puerto Rico, Pub. L. No. 7 of 2009, 2009 P.R. LAWS 7 [hereinafter *Ley 7*] (codified as amended in scattered sections of P.R. LAWS ANN.).

²² See CIA – THE WORLD FACTBOOK, *supra* note 9.

Puerto Rico's, with an estimated GDP (PPP) for the year 2009 of \$55.84 billion, but because of its smaller population it breaks down to a per capita distribution of \$27,900, a little under one and a half times the figure on the Island.

Slovenia is mentioned in *Soberanías exitosas* not so much because of a specific development model but because of its extraordinary economic story. Slovenia went from being a communist nation, part of the Yugoslav Federation and the Soviet Bloc, to an independent and open economy with membership in the European Union within a span of less than two decades. Collado Schwarz highlights a few reasons for this impressive turnaround, namely the existence of political consensus and the inclusion of many societal factions in the discussion and implementation of the government's development strategy. Since the first point is, like in Singapore's case above, a political issue, we will go straight to discussing the second reason considered by the author.

Soberanías exitosas mentions that the transition from a planned, communist, economy to an open one was achieved with ample participation by the unions extant from the communist period. The privatization of government businesses included representatives from the labor sector²³ throughout the deliberation and implementation process, which allowed the labor sector to voice its priorities with regard to the government's economic policies. This in turn prevented resentment or condemnation of the government's drive to pursue an open economic model. The labor sector was thus an active participant in the drive to implement the new economic programs, greatly accelerating its acceptance and deployment. While this participation has prevented Slovenia from becoming a *true* capitalist economy,²⁴ its pragmatism has made what could have been a very contentious process occur in a surprisingly short amount of time. Collado Schwarz remarks that it seems to validate the saying that "necessity is the mother of invention", due to the fact that the plans necessary to deal with the situation came about during a very uncertain and chaotic period in Slovenia's history.²⁵

What remains elusive during the analysis of Slovenia, however, is a concrete reason as to why Puerto Rico cannot emulate these lessons. There is nothing that directly prohibits the government of Puerto Rico from working in concert with the labor sector, and vice versa, other than cultural and political reticence. The closest the book comes to identifying a limitation with the current system is to blame the *dependence culture* for a lack of creativity in dealing with economic and development issues, as well as the failure to adopt a parliamentary system which would incentivize consensus politics.²⁶ The problem with this train of

23 COLLADO SCHWARZ, *supra* note 2, at 53 (interview with Francisco Catalá Oliveras) (translation ours).

24 *Id.* at 55 (interview with Francisco Catalá Oliveras) (translation ours).

25 *Id.* at 57 (translation ours).

26 *Id.* (translation ours).

thought is that it springs from a structural presumption, that only a fundamental change in the current system in Puerto Rico would propitiate a drastic reordering of the developmental values held by the government, which is actually the opposite of what the case study seems to imply. Slovenia got to where it is, following the logic of the book's argument, by taking elements it was already familiar with and expanding on them, allowing multiple sectors to participate in the process of shaping a new developmental path. The book identifies this as *evolutionary* thinking, or building on established frameworks towards demarcated and achievable goals, which is contrasted with *utopian* thinking, which implies a great leap towards one that is much larger and more difficult to achieve.²⁷ By insisting on a fundamental change to the current political order, the book paradoxically seems to advocate for the latter instead of the former.

C. Ireland

Ireland, the only country on the list from Western Europe, is the second largest nation in terms of area in the book, with a total of 70,273 square kilometers.²⁸ With a population of 4,250,163, it is second only to Singapore in terms of per capita income, with an estimated GDP (PPP) for the year 2009 of \$176.9 billion translating into a distribution of \$42,200 per person. Its economic development has accelerated greatly in the last few decades, to the point where pharmaceutical companies that once did business out of Puerto Rico are relocating in Ireland to take advantage of its economic policies.

This was not always the case, however. In 1982, the government employed the Telesis Consultancy Group to review its economic development strategy, which resulted in the printing of a volume of the National Economic and Social Council's Review of Industrial Policy commonly referred to as the Telesis Report.²⁹ *Soberanías exitosas* identifies the Telesis Report as a major turning point in the economic development of Ireland,³⁰ and its findings are eerily prescient when compared to Puerto Rico's current situation. The report begins by remarking that:

For the past thirty years, Ireland has been engaged in a massive national effort to industrialize. . . .

The results of this effort are visible in the increase in living standards enjoyed by the Irish people. . . .

Despite this record of accomplishment, many in Ireland feel the need to review the course of the country's industrial development strategy. This need arises

²⁷ *Id.* at 55 (interview with Francisco Catalá Oliveras) (translation ours).

²⁸ See CIA – THE WORLD FACTBOOK, *supra* note 9.

²⁹ *National Economic and Social Council Report No. 64, A Review of Industrial Policy*, [http://www.nesc.ie/dynamic/docs/NESC64%20\(chapters%201-3\).pdf](http://www.nesc.ie/dynamic/docs/NESC64%20(chapters%201-3).pdf).

³⁰ See COLLADO SCHWARZ, *supra* note 2, at 64 (translation ours).

es partly from some persistent and annoying trends in Ireland's industrial performance in recent years. Though Ireland has been improving its living standards, the income gap between it and most other industrialized countries has seriously widened over the past twenty years. Furthermore, the economy is increasingly dependent on foreign corporations for its industrial jobs. Foreign-owned corporations now make up a third of Irish manufacturing employment, compared to only a quarter in 1973. Despite rapid increases in exports, Ireland's net trade balance has gone increasingly negative. Finally, state aid to industry is rising rapidly (especially if tax expenditures are included) at a time when the national budget is stretched.³¹

Soberanías exitosas identifies two parts of the report that specifically address problems Puerto Rico is facing today, namely: (1) that government subsidies and incentives to attract foreign corporations are not providing long term economic benefits to outweigh their costs, and (2) that the local economy exists with very little interaction with this foreign component.³² Some of the recommendations offered by the Telesis Report are listed below.

As to subsidies and investments given to foreign corporations, it recommends a "substantial reduction in the average grant levels for many foreign-owned firms locating in Ireland"³³ due to the fact that "in many cases, considerably more incentive is given to foreign firms to invest in Ireland than is necessary."³⁴ Instead of just generally attempting to attract foreign investment, Ireland should "respond more selectively by bidding very high on the really attractive projects, and significantly lower on the bulk of potential projects."³⁵ As to what defines a project as attractive, the Telesis Report establishes the following characteristics: (1) projects that will locate functions which are key to the competitive success of the company in Ireland; (2) stand-alone projects that can survive without significant reliance on the parent company; (3) projects which form a significant market for potential sub-supply linkages; (4) projects with a real commitment to skilled employment; and (5) projects which can substitute for imports.³⁶

The Telesis Report also intertwines this reduction of aid to foreign corporations with a corresponding reduction to certain sectors of the native Irish economy. It states that the previous reduction should be accompanied by "a sharp reduction of grants given to indigenous companies for non-traded businesses

³¹ *Id.* at 41 (translation ours).

³² *Id.* at 64 (interview with Francisco Catalá Oliveras) (translation ours).

³³ *National Economic and Social Council Report No. 64, A Review of Industrial Policy, supra* note 29, at 35.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

(with the exception of high-skilled, sub-supply industries),³⁷ noting that “[w]hen Irish value added is not threatened by imports, grants should not be necessary to create business opportunities. The only justification for granting non-traded businesses is in cases of particularly acute regional disparities within Ireland.”³⁸

As to integrating the local and foreign components of the economy, the Telesis Report recommends complementing the above suggestion by encouraging “greater participation by large indigenous companies and by the indigenous financial community in traded and skilled sub-supply businesses in Ireland.”³⁹ By encouraging the growth of sub-supply industries, the government would be increasing the degree of research and skilled labor in local industries, while at the same time providing an incentive for foreign corporations to relocate to or avoid relocating from Ireland.

While these suggestions may not apply specifically to Puerto Rico, they do present an effective model for how to take the first steps toward an effective development program. As to why it has not been followed, *Soberanías exitosas* presents the same argument voiced previously: that Ireland has been able to achieve these goals by having an enterprising and dynamic government that is able to implement the recommendations presented in the Telesis Report. While this is certainly a deciding factor, it hardly follows that the government is dynamic or effective because of its sovereign nature. Ireland achieved its success by trading within the European common market, and since the creation of the euro it has lost its ability to set its monetary policy unilaterally. Its success did not come from exercising sovereign powers, but from being able to identify problem areas in its economy and implementing economic policy to react accordingly.

The recommendations contained within the Telesis Report do not deal with the legal powers of Ireland as a nation but with the priorities its government was giving to certain industries and sectors. It did not say that Ireland needed to devalue its currency or negotiate better treaties, two clear exercises of sovereign power, but rather that Ireland needed to reevaluate how it prioritized certain sectors of the economy and utilize economic incentives and government investment programs to stimulate the development of businesses that would benefit its long-term economic plans. Puerto Rico’s ability to set its own economic and tax policies, as well as the government’s ability to prioritize certain sectors of the economy,⁴⁰ shows that there is no lack of legal powers to carry out and then implement the recommendations of a similar report.

³⁷ *Id.* at 36.

³⁸ *Id.*

³⁹ *Id.* at 37.

⁴⁰ This is the same as seen with priority given to public-private partnerships. See Public-Private Partnerships Act, Pub. L. No. 29 of 2009, P.R. LAWS ANN. tit. 27, §§ 2601-2623 (2009 & Supl. 2010).

D. Israel

Israel, the only country analyzed by *Soberanías exitosas* located in the Middle East, is the most populous model nation, with 7,353,985 inhabitants.⁴¹ With a total area of 22,072 square kilometers, however, it is still not as densely populated as Singapore. Israel's estimated economic output for the year 2009 amounted to a GDP (PPP) of \$205.8 billion, or about \$28,400 per capita.

Israel has very little in common with Puerto Rico. It is substantially larger, with deserts comprising a large part of its territory, and it has almost double the population. It has been in a state of constant conflict with its neighbors from the moment of its creation in the mid-twentieth century, needing a large military maintained by universal conscription. Yet, for all its differences, Israel serves as a model by showing that it is possible to create a flourishing economy even while dealing with a myriad of conditions that do not relate directly to economic policy.

One of the points that *Soberanías exitosas* repeatedly highlights about Israel is their impressive agricultural industry, which provides food for local consumption and still leaves enough for export.⁴² This has been achieved through government programs that promote irrigation technology and mechanization, which in turn allows agricultural areas to be very productive.⁴³ Even more impressive, however, is the fact that agriculture only amounts to 2.6% of Israel's GDP, and employs only 2% of its labor force. It is a concrete example, if one was needed, that a country can satisfy its nutritional needs, with enough left for export, without having to dedicate itself almost exclusively to the purpose of agriculture.

There are problems with this model that must be dealt with, however. Although private agricultural corporations exist in Israel, around 75% of the agricultural production is done in one of two types of cooperative farming institutions: the kibbutz and the moshav.⁴⁴ Each of these responds to beliefs that cannot be appropriated without the corresponding historic and cultural context. The kibbutz originated as a farming movement where the members owned everything in community, with no private ownership in the land or product.⁴⁵ They were, in effect, socialist farming communes. Moshavs, for their part, are cooperative enterprises where each member owns and works his own land, but where resources are pooled for marketing, infrastructure and cooperative efforts.⁴⁶ Both the kib-

⁴¹ See CIA – THE WORLD FACTBOOK, *supra* note 9.

⁴² COLLADO SCHWARZ, *supra* note 2, at 83 (translation ours).

⁴³ *Id.* at 87 (interview with Francisco Catalá Oliveras) (translation ours).

⁴⁴ See ISRAEL MINISTRY OF AGRICULTURE & RURAL DEVELOPMENT, http://www.moag.gov.il/agri/services/kishurim_shimushim/English_links/ (last visited Nov. 3, 2010).

⁴⁵ *Id.*

⁴⁶ *Id.*

butz and the moshav respond to socialist ideas from the early twentieth century, as well as elements of Zionism, and as such cannot be transplanted unchanged from Israel to Puerto Rico.

This is not to say that it is not a viable example. As mentioned previously, Israel shows that agricultural self-sufficiency is possible even when facing great odds and that having a large scale agricultural program is not incompatible with a predominantly industrial and service economy. What remains, then, is whether Israel is doing anything that Puerto Rico would not be able to do. While Israeli agriculture has its own particular motivations, be it the ideologies described previously or the government's desire to promote agriculture as a facet of national defense, the actual methods used are not outside the scope of what is achievable by Puerto Rico using its current legal powers.

The moshav model is viable under existing cooperative legislation. The General Cooperative Associations Act⁴⁷ specifically includes agricultural cooperatives in its stated goals, stipulating that the act exists in order to facilitate developing and consolidating other key economic sectors by means of the cooperative organization of production, services, agriculture and housing. To these ends, cooperatives may be comprised by workers, consumers, housing, and users and mixed groups, and may devote themselves to provide services or to production, or both, with their activities encompassing any kind of lawful activity that is proper or incidental to the achievement of its ends and purpose on equal footing with others subject to private law. Cooperatives organized under the law also include far reaching economic incentives, specifically tax exemptions. Cooperatives, their subsidiaries and affiliates, enjoy exemption from income taxes, property taxes, excise tax, municipal license fees, and any other tax imposed or to be imposed in the future by the Commonwealth of Puerto Rico or any of its political subdivisions. These exemptions apply to "all their activities or operations, all their assets, capital, reserves and surplus, and those of their subsidiaries or affiliates."⁴⁸

The legislation also includes mechanisms by which the government can further subsidize the creation of agricultural cooperatives when it stipulates that:

The Commonwealth Government and the Municipal Government may sell, lease, exchange or otherwise transfer to those cooperatives organized pursuant to the laws of Puerto Rico, real property belonging to said governments without being subject to the requirements of a bid in those cases, in which it is a requirement of law, provided that it is for a reasonable price.⁴⁹

The cooperatives in this scenario are also exempt from rent for the use of the facilities in the offices of the different agencies, instrumentalities, and public corporations. For its part, the government is protected from misuse of these

⁴⁷ General Cooperative Associations Act, Pub. L. No. 239 of 2004, P.R. LAWS ANN. tit. 5, §§ 4381-4667 (2005 & Supl. 2008).

⁴⁸ P.R. LAWS ANN. tit. 5, § 4525 (2008).

⁴⁹ *Id.* § 4528.

mechanisms by law. The act states that whenever the cooperative wants to sell land obtained in this way, “it shall first be offered for resale to the government, which shall have thirty (30) days to inform the cooperative of its intentions to reacquire said property.”⁵⁰

Taking into account the generous dispositions mentioned above, the picture that emerges is one where any limitation that exists is not due to the lack of appropriate powers or legislations that take into account the situation. There is nothing that specifically prevents the government from stimulating the growth of the agricultural sector, or private or cooperative enterprise from participating in it, other than a belief that it is not a growth industry. The problem with this thinking is that it only looks at the direct consequences of an agricultural model, without taking into account the secondary benefits that such an industry brings. Israel is proof that given the will and the necessity, a strong agricultural sector will not only not displace the rest of the economy, but will contribute to the development of the national economy. Once more, the fact that these ideas have not been implemented has less to do with what legal powers Puerto Rico has or doesn't have, and more to do with the political and cultural mindset of the island.

E. New Zealand

By far the largest of the nations chosen as models in *Soberanías exitosas*, New Zealand is an archipelago in the South Pacific with an area of 267,710 square kilometers.⁵¹ With a relatively small population, for its size, of 4,252,277, its estimated economic output for 2009 is a GDP (PPP) of \$115.3 billion, which amounts to around \$27,400 per capita.

The inclusion of New Zealand on the list serves as another example of a country with a population similar to Puerto Rico's being able to attain a high level of development, but it adds little to the models mentioned previously other than serving as proof that geographic isolation is not a limiting factor when it comes to successful economic planning. However, it is important to note how remote New Zealand actually is. While New Zealand and Australia appear to be practically next to each other, the sense of distance is clouded by how large Australia really is. To put this in perspective, the distance between Sidney, Australia, and Auckland, New Zealand, is 1,340 miles. By contrast, the distance between San Juan, Puerto Rico, and New York, New York, is 1,610 miles. Although Australia is New Zealand's largest trade partner, only 23.4% of its imports go there and it only receives 18.4% of its imports from the island continent. It exports 9.6% of its goods to the United States and another 9.2% to China, and receives 10.5% and 15.1% of its imports correspondingly. Using major port cities as a reference for a rough estimate, this means that any goods traveling to and from Hong Kong to

⁵⁰ *Id.*

⁵¹ See CIA – THE WORLD FACTBOOK, *supra* note 9.

Auckland travel 5,685 miles, goods traveling to and from Shanghai travel 5,834 miles, and goods traveling to and from Los Angeles travel 6,527 miles. If the goods are traveling between Auckland and New York, the distance is a staggering 8,831 miles. It is important to note that these distances represent linear travel, and do not account for the particularities of sea routes that go to and from New Zealand.⁵²

Given these logistical difficulties to overcome, the fact that New Zealand is as prosperous as it is, is outstanding. As discussed earlier with Singapore, however, trade is not necessarily an activity where sovereignty will necessarily define what you can and cannot do with respect to how you conduct your business. Efficient and enterprising government can overcome any obstacle given the opportunity and will to do so.

F. Estonia

The last country analyzed in *Soberanías exitosas*, and the second from the former Soviet Bloc, Estonia is a nation on the Baltic Sea with an area of 45,228 square kilometers, about five times the size of Puerto Rico.⁵³ Its population of 1,291,170 generates a 2009 estimated GDP (PPP) of \$24 billion, which represents a per capita distribution of \$18,500, slightly more than a thousand dollars per person higher than Puerto Rico.

Soberanías exitosas highlights various aspects of Estonia's development which merit analysis. The first is how the government has structured the education system so that the aims of the education sector and the economic sector are in sync.⁵⁴ The Estonian education system does not exist independently of the nation's economic necessities; instead, it helps educate people to participate in the economic activities that are consonant with the goals of the state development plan. Touching on a different point, *Soberanías exitosas* also comments on the simplicity of the Estonian tax system. Estonia taxes all income, be it personal or corporate, at a flat rate of 23%.⁵⁵ Finally, the book praises the Estonian government's drive to put all government services online, reducing the associated transactional costs.⁵⁶

Without getting into the necessity, practicality or wisdom of any of these examples, it remains to be seen whether any of them are beyond the legal powers of the government of Puerto Rico. With respect to education, the Puerto Rico Department of Education has wide authority to tailor the curriculum in a way

⁵² *Id.*

⁵³ *Id.*

⁵⁴ COLLADO SCHWARZ, *supra* note 2, at 137-38 (interview with Francisco Catalá Oliveras) (translation ours).

⁵⁵ *Id.* at 139 (translation ours).

⁵⁶ *Id.* 138-39 (translation ours).

that would be consonant with the Estonian model;⁵⁷ that it fails to do so is more an administrative and planning failure than a lack of legal powers. The same is the case with respect to taxes, as the Puerto Rico Federal Relations Act specifically exempts the Island from Federal Internal Revenue laws,⁵⁸ giving the Island wide authority to set its income tax policy. With respect to the last point, the government of Puerto Rico has already initiated a drive to offer its services online. While it is not yet a *paperless* government, it has already started on that path. There is nothing that prohibits the government of Puerto Rico from implementing any of these policies, other than a lack of will to do so.

II. PUERTO RICO

Taking into account the strategies used by the model countries mentioned in the previous section, it is important to see what Puerto Rico has been doing with respect to its economic situation, as well as what it could be doing but has not yet done. In doing so, the aim of this section is to show how Puerto Rico already exercises the legal powers necessary to implement the strategies highlighted by *Soberanías exitosas*, as well as mention strategies already in use by U.S. states that could be implemented immediately by Puerto Rico.

A. Puerto Rico Emergency Fiscal Stabilization Plan

In 2009, the government of Puerto Rico passed a series of laws intended to deal with the economic and fiscal crises that both the government and the population faced. Collectively, they are known as the Emergency Fiscal Stabilization Plan, but are more commonly referred to under the sobriquet of *Ley 7*, the first law in the series and the one that sets the foundations for the others. Each of the four laws lays out the government's priorities with respect to the current economic situation and, as such, merit analysis to see the extent of what the government is implementing through the legislation.

The first law, *Special Law Declaring a State of Fiscal Emergency and Establishing an Integral Fiscal Stabilization Plan to Save the Credit of Puerto Rico*,⁵⁹ deals with various aspects of the government's finances. It modifies parts of the Puerto Rico Internal Revenue Code, both temporarily and permanently, affecting individuals and corporations, as well as implements new duties on items such as cigarettes, motorcycles, and alcohol.⁶⁰ It also establishes a payroll reduction

⁵⁷ Organic Act for the Department of Education of Puerto Rico of 1999, Pub. L. No. 149, P.R. LAWS ANN. tit. 3, §§ 143a-146f (2009).

⁵⁸ 48 U.S.C. § 734 (2002 & Supl. 2010).

⁵⁹ *Ley 7*, 2009 P.R. LAWS 7.

⁶⁰ P.R. LAWS ANN. tit. 13, §§ 9009, 9014, 9221 (2007 & Supl. 2010).

scheme by giving the government the authority to reduce the number of people employed in the public sector.⁶¹

The second law, which amends *The Infrastructure Financing Authority of Puerto Rico Act*,⁶² deals mainly with how the government of Puerto Rico will handle the disbursement of funds received due to the federal American Recovery and Reinvestment Act of 2009.⁶³ It assigns the responsibility of distributing the funds to the Puerto Rico Infrastructure Financing Authority.

The third law, the Puerto Rican *Economic Stimulus Plan Act*,⁶⁴ sets apart public funds with the aim of distributing them in activities that the government believes will help stimulate the economy. This includes funds set aside for mortgage assistance programs,⁶⁵ funds to incentivize home purchases,⁶⁶ funds to economically stimulate small and medium sized businesses,⁶⁷ as well as funds to aid in work retraining.⁶⁸ The law aims to work in conjunction with the other laws mentioned previously to provide funds to get the economy moving again.

The last law, the *Public-Private Partnership Act*,⁶⁹ establishes that it will be government policy to:

Favor and promote the establishment of Public-Private Partnerships for the creation of Priority Projects which, among other ends, will: foment the development and maintenance of infrastructure installations, divide between the State and the Contractor the risk associated with the development, operation or maintenance of said Projects, improve both the functioning and services offered by the Government, aid in job creation, promote the socioeconomic development and competitiveness of the Country.⁷⁰

It then goes on to establish the requirements and functions of the Public-Private Partnerships Authority, which is tasked with determining which government functions would benefit from the Public-Private Partnership model, promoting the model to interested and capable private parties, and overseeing the implementation and adherence to the regulations contained in the law.

⁶¹ P.R. LAWS ANN. tit. 3, § 8795 (2006 & Supl. 2010).

⁶² *Id.* §§ 1903, 1922.

⁶³ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (codified in scattered sections of U.S.C.).

⁶⁴ Puerto Rican Economic Stimulus Plan Act, Pub. L. No. 9 of 2009, P.R. LAWS ANN. tit. 13, §§ 142-155 (2007 & Supl. 2010).

⁶⁵ P.R. LAWS ANN. tit.13, § 145 (2007 & Supl. 2010).

⁶⁶ *Id.* § 146.

⁶⁷ *Id.* § 148.

⁶⁸ *Id.* § 149.

⁶⁹ Public-Private Partnership Act, Pub. L. No. 29 of 2009, P.R. LAWS ANN. tit. 27, §§ 2601-2623 (2009 & Supl. 2010).

⁷⁰ P.R. LAWS ANN. tit. 27, § 2602 (2009 & Supl. 2010) (translation ours).

Without going into the merits of the laws described above, their existence is proof that Puerto Rico has the legal powers to establish a comprehensive economic development strategy. The first law shows how Puerto Rico can modify its Internal Revenue Code in order to implement a particular fiscal and economic policy, as well as how it can modify the government's structure to suit its needs. The second law shows how the government can delegate the distribution of funds to an entity tasked with ascertaining the most economically beneficial method of disbursement. The third law highlights the government's ability to incentivize areas of the economy it determines as important to the economic health of the country, while the fourth shows how the government can adopt new economic models to achieve the aims of economic development. All of these elements appear, in one way or another, as part of the lessons learned from the model nations in *Soberanías exitosas*.

B. Country Agreements and Bi-National Chambers of Commerce: The Florida and Massachusetts Model

Puerto Rico is not alone in being prohibited by the United States Constitution from making treaties with foreign nations, economic or otherwise.⁷¹ Every state in the Union is affected by this prohibition; however, this has not prevented states from crafting agreements and networks that emulate the benefits of commerce treaties but stopping short of actually referring to them as such. This section will analyze the methods employed by the states of Florida and Massachusetts to show that these are available to Puerto Rico under its current legal powers.

1. Florida

The state of Florida uses two programs that are of interest here. The first is Enterprise Florida,⁷² a directory and knowledge center which serves as an information hub for people interested in doing business with or from Florida. The services offered by Enterprise Florida include information on exporting from and importing to the state, directories of companies already doing business with Florida from around the world, information on the industry cluster available for research and development in the state, as well as information about free trade zones located close to the state which can be used in the movement of cargo. It also provides information about trade shows occurring in the state,⁷³ as well as provides assistance to those inside and outside the state who wish to include

⁷¹ U.S. CONST. art. 1, § 8.

⁷² ENTERPRISE FLORIDA, <http://www.eflorida.com> (last visited Nov. 3, 2010).

⁷³ ENTERPRISE FLORIDA EVENTS, <http://www.eflorida.com/Events.aspx> (last visited Nov. 3, 2010).

Florida in their business plan.⁷⁴ The assistance is not limited to Florida but includes offices in twelve countries which can help coordinate exports and imports.⁷⁵

A second program available through the state of Florida is a multitude of Bi-National Chambers of Commerce. These organizations are dedicated to the promotion of bilateral trade between Florida and other nations, providing individualized support both for Florida businesses who wish to export to the country in question, and to businesses from the country that wish to expand their activities to Florida. An umbrella organization known as ABiCC, or the Association of Bi-National Chambers of Commerce in Florida,⁷⁶ serves as an information hub to the different Chambers; they can also be contacted through Enterprise Florida. Although some of the Bi-National Chambers represent offices of a larger U.S. organization, such as the Barbados-USA Chamber of Commerce, others represent nations that the state of Florida has a specific interest in increasing trade with, such as the Florida China Chamber of Commerce and the Argentine Florida Chamber of Commerce.⁷⁷

The Florida model shows that any U.S. state can set up structures that promote international trade both to and from its jurisdiction without entering into specific arrangements with other countries, instead providing the information and services necessary for the trade to occur via support for dedicated private organizations. Even though Florida has the same limitations as Puerto Rico with respect to making treaties, its organizations, such as ABiCC and Enterprise Florida, help businesses in the state be able to conduct trade with more than 130 foreign nations.

2. Massachusetts

The Commonwealth of Massachusetts takes a slightly different path from the Florida model. While Massachusetts has a knowledge and information hub similar to Enterprise Florida in the form of Massachusetts Export Center,⁷⁸ what is more interesting is how it has implemented agreements with other countries that promote and incentivize trade between them without running afoul of the Constitutional limitation on treaties. These *Country Agreements* are the focus of analysis when referring to the Massachusetts model.

⁷⁴ ENTERPRISE FLORIDA LOCATION ASSISTANCE FORM, <http://www.myeflorida.com/mk/get/paform> (last visited Nov. 3, 2010).

⁷⁵ ENTERPRISE FLORIDA INTERNATIONAL OFFICE NETWORK, http://www.eflorida.com/ContentSubpage.aspx?id=360#intl_offices (last visited Nov. 3, 2010).

⁷⁶ ASSOCIATION OF BI-NATIONAL CHAMBER OF COMMERCE IN FLORIDA, <http://www.abicc.org> (last visited Nov. 3, 2010).

⁷⁷ ARGENTINE-FLORIDA CHAMBER OF COMMERCE, <http://www.argentinaflorida.org> (last visited Nov. 3, 2010).

⁷⁸ MASSACHUSETTS EXPORT CENTER, <http://www.mass.gov/export> (last visited Nov. 3, 2010).

Massachusetts promotes international trade through MOITI, or the Massachusetts Office of International Trade and Investment.⁷⁹ Along with its previously mentioned sister agency, the Massachusetts Export Center, MOITI is tasked with assisting the state to “create new employment opportunities within the Commonwealth by conducting research and disseminating and providing information to foreign business, interested observers, and the general public.”⁸⁰ To this end, MOITI has entered into twenty-two *Country Agreements* with foreign nations, from Argentina and Brazil to India, Israel, Japan and Spain.⁸¹ Varying slightly from country to country, the general purpose of these agreements is to “promote cooperative ventures in trade, investment, technology and education.”⁸² They are not official agreements between Massachusetts and the nations in question, as they are not ratified by either the state government or its counterpart, but are instead agreements between MOITI, as a representative of Massachusetts, and a competent representative of the agreeing nation, be it a minister, governor, head of the Municipal Commission of Commerce, or representative of a national trade organization.⁸³ In practice however, the offices established by these agreements serve as liaisons between Massachusetts and its partners, helping promote business endeavors that benefit both the state and the nation. The exchange of information takes the place of economic incentives, which in our modern economy can be as if not more valuable.

The Massachusetts model again utilizes a quasi private party to handle its international promotion, but in doing so it is sidestepping the issue of state negotiations with a foreign power. Although not formally codified into law, these agreements have a similar economic impact in that they provide information and knowledge resources to allow state and foreign corporations to effectively conduct business, which in turn benefits the economy of the state as a whole. The fact that both Massachusetts and Florida have been able to use these programs to attract business to their states is sufficient proof that they are not prohibited under the Federal Constitution. Puerto Rico’s ability to exercise the same legal powers as these two states shows that there is no prohibition that prevents the Island from taking this road as well.

⁷⁹ MASSACHUSETTS OFFICE OF INTERNATIONAL TRADE & INVESTMENT, <http://www.moiti.org/> (last visited Nov. 3, 2010).

⁸⁰ *About Us*, MASSACHUSETTS OFFICE OF INTERNATIONAL TRADE & INVESTMENT, http://www.moiti.org/about_us.asp (last visited Nov. 3, 2010).

⁸¹ *Country Agreements*, MASSACHUSETTS OFFICE OF INTERNATIONAL TRADE & INVESTMENT, http://www.moiti.org/partnership_countryagreements.asp (last visited Nov. 3, 2010).

⁸² *Id.*

⁸³ *Id.*

III. DECONSTRUCTING SOVEREIGNTY

Taking the above analyses into consideration, it becomes necessary now to question the validity of *Soberanías exitosas*'s argument that the above models require the exercise of sovereign authority. While all the countries mentioned as models share the elements of independence and sovereignty over their affairs, it is doubtful that this is the precondition for their extraordinary success. To reiterate, let us look once more at Collado Schwarz's thesis as stated at the outset of his book: "[t]he key to Singapore, New Zealand, Israel, Ireland, Slovenia and Estonia's success has been their formidable human resources, which, combined with the necessary sovereign powers, have allowed them to establish goals, long-term plans and strategic alliances."⁸⁴ While it is plain to see that all the nations mentioned have impressive human resources, both at the governmental and social level, the unifying factor in all of these nations has not been their ability to wield sovereign authority but their response to a moment of economic, social, and national crisis.

Human resources and political powers make up only part the picture; if these were the only requirements then there would be more models to follow, not the limited number selected. Each of the nations mentioned above went through difficult moments to reach the points where they are today; some of them had these moments thrust upon them. Recounting the *birth* of Singapore, Lee Kwan Yew comments that "all of a sudden, on 9 August 1965, we were out on our own as an independent nation. We had been asked to leave Malaysia and go our own way with no signposts to our next destination."⁸⁵ The drive to succeed was not an abstract ideal of economic dimensions but a very real political and cultural crisis:

Nobody had asked us to push the British out. Driven by our visceral urges, we had done so. Now it was our responsibility to provide for the security and livelihood of the 2 million people under our care. We had to succeed, for if we failed, our only survival option would be a remerger, but on Malaysian terms, as a state like Malacca or Penang.⁸⁶

Independence or sovereignty did not move Singapore to excel. A change in their mindset did, with sovereignty just one of the tools used to accomplish the goal of looking after its citizens.

Slovenia broke from the Yugoslav Federation just as the Soviet Bloc was starting to disintegrate; Ireland was finally granted independence after centuries of colonial rule but took decades to change its economic fortunes; Israel was literally born in battle, with the 1948 Arab-Israeli war starting the day after Israel

⁸⁴ COLLADO SCHWARZ, *supra* note 2, at 13 (translation ours).

⁸⁵ KUAN YEWE, *supra* note 12, at 3.

⁸⁶ *Id.* at 8.

declared its independence; New Zealand is one of the most remote groups of islands in the world; Estonia weathered the end of the Soviet Union only to have Russian forces remain in the country for years before finally withdrawing. All of these situations have propitiated ingenious ways of responding to supposed limitations, but more than anything they have brought together the political spectrum of each country to compromise in the face of threatened national survival.

Focusing on whether or not Puerto Rico could do better if it was a sovereign nation overlooks the very serious and real problems of the here and now. It is nothing more than a modality of the status debate, and as such only serves as a wedge issue without providing the concrete solution. The status debate, and the mindset it propagates, impedes any concerted effort to resolve Puerto Rico's problems. It subjugates all policy discussions to political ones, and presents the resolution of the question of status as a singular act that will bring about an end to countless problems in one fell swoop. If there is one lesson to be learned from the models discussed in *Soberanías exitosas*, it is that the nations analyzed did not achieve their prosperity through one decisive act, but through gradual, carefully implemented policies that affected both the public and private spheres. These policies required consensus between the different sectors that encompassed the body politic of the nations in question, a consensus that is impossible while the status mindset continues to analyze any proposal in terms of whether it forwards its political goals or not.

On a pragmatic level, the existence of legislation such as Emergency Fiscal Stabilization Plan proves that Puerto Rico has many of the powers attributed to the nations in *Soberanías exitosas* because of sovereignty. It establishes economic policy goals, sets aside funds to accomplish those goals, creates frameworks that implement new business models, and incentivizes economic activity through investment or internal revenue means. Looking outward, the examples of Florida and Massachusetts provide Puerto Rico with models within the U.S. federal system that evidence efforts to promote foreign trade and investment without being limited by the Constitutions prohibition on state negotiation with foreign powers. These are concrete examples that do not require having to look very far to see what can and cannot be done by Puerto Rico using its current legal powers, but because of the mindset that status breeds, they represent unacceptable in light of how they do not resolve the underlying political question.

The nations mentioned in *Soberanías exitosas* are not without faults as models, but they represent proof that size and population are not obstacles when it comes to implementing effective development policy. What they are not, however, are examples of how this development is only achievable through the resolution of status. Politics, not a lack of powers, is what prevents the implementation of any of the models discussed.