

The Exception to the Rule of Law and the Corruption of Democracy in America¹

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I overheard a couple at a bar in a remarkable conversation - the gender, of course, is unimportant since we are libertarians. I shamelessly listened in when one of the persons said: "I will do anything, anywhere, anytime, in the office, in the bar, in the car, inside and outside the door. You just tell me when.

On taking in the full impact of this provocation, the other individual answered: "We are two of a kind." and then stopped to gauge the impact of these words, only to add, "I also work in government, are you state or local?"

Why revisit a concept developed 90 years ago, the exception?

It helps to understand the long standing relationship of Puerto Rico and the United States government, but also the power over Puerto Rico of corporations and institutions that sustain the federal government. The interests developed during the past century, interests on the Island, many individual, many corporate and many governmental have developed ties with the Nation, ties often characterized by clientelism² and self-interest but not devoid of good will and generosity on both sides.

To more than 90% of Puerto Rican Islanders, it is inconceivable that they be anything but Puerto Ricans and American citizens. To more than sixty percent of Islanders, life would be unbearable without federal transfer payments, some earned such as social security and Medicare, and others unearned such as Food Checks and Medicaid (transfer payments from state-side taxpayers). The middle class and the working class would be hard put to send their children to colleges and universities if it were not for Pell grants and student loans. The wealthy made good use of federal tax-abatements and of triple tax exempt bonds until the 2006 melt-down of government finances and the crash of the local economy.

¹ This paper was the basis for a short presentation on August 9, 2017 at the Liberty International Forum held in Fajardo, Puerto Rico.

² This subject of clientelism is amply explored in Anthony Maingot, **The United States And The Caribbean: Challenges Of An Asymmetrical Relationship**. Westview Press, 1994.

Governor Sila Calderón claimed in 2002 that Puerto Rico's current relationship with the U.S. Rico was the best of both worlds. Hubris –arrogance and pride- describes but does not explain the melt-down that led Puerto Rico in 2006 into becoming the nearest thing to a failed state in the Nation.³ In 1963 the crisis was predicted by a local economist that would become state secretary of Commerce, Jenaro Baquero; ten years later, James Tobin, the 1981 Nobel on economics, warned of impending doom, James L. Dietz, an economic historian advised islanders on the weak foundation of their economy, Hexner and Jenkins did the same in 1996, and Pelzman identified the recurring problems in the development thrust that Island leaders would not change, but that by that time, 2002, Congress had severely curtailed. How come no one paid attention? There was too much money to be made, short term, by financial institutions and too much power to be yielded by local politicians and political parties.

What are the characteristics of an exception to the prevailing rule of law and the substitution for another rule?

The exception is a politico-legal relationship that imposed on Islanders the loss of equal political rights (electoral and representational) and a separate rule of law directed at continued control of Islanders and their government. It was an attempt at total social and cultural change; the public school system, as conceived by the federal government, was to Americanize and change the language of Islanders. Islanders of all political persuasions balked.

This was done through two laws originating in the U.S. Congress, the Foraker Act and the Jones Act (1917) and several decisions of the Supreme Court from 1900 through 1921 generally known as the *Insular cases*. Special laws and Congressional acts such as those allowing Puerto Rico to elect its own governor, write a Constitution (with the final product requiring Congressional approval), changes in the authority to emit bonds also held Puerto Rico to the U.S.

Changes in laws applying nation- wide would make exceptions for Puerto Rico, for example,

1. after being part of the Bankruptcy Act for many years, it was excepted from it, together with other territories, in 1984;
2. the Sugar Act (Costigan Act) of 1934 that made grants to farmers in the nation, redirected them to a federal organization, the Puerto Rico Reconstruction Administration;
3. Social Security did not include American citizens in Puerto Rico until 1949;
4. Supplementary Security Assistance programs for the elderly that had not qualified for social security did not include Puerto Rico;
5. Medicaid included Puerto Rico in a fixed set aside, not tying it to need,
6. Elementary and Secondary Education did not treat Puerto Rican children as fully eligible, so a ceiling was imposed,
7. the 1913 Income tax law did not include Puerto Rico as a state, etc.

Nevertheless, all laws pertaining to defense of the nation, including the draft, included Puerto Rico from 1917 on. Through decisions on applicability of the law by Congress and by the Supreme Court, many social and economic aspects were regulated or induced into a path different from that

³ Carlos E. Chardón, "Masking Puerto Rican state failure." December 3, 2015. <http://www.focaaiblog.com/2015/12/03/carlos-chardon-masking-puerto-rican-state-failure/#sthash.fbenvE1g.dpuf>

in the states. Notably, these exceptions in the law, when challenge in federal court, were sustained by the Supreme Court.

Many of the laws passed by Congress or even by the local legislature were directed at benefitting American corporations; one of them was the devaluation of the peso in gold standard against the dollar in silver standard. Overnight island farmers lost 40% of their capital forcing many into bankruptcy and forced sales.

Perhaps the most notable freedom was the right to migrate to the U.S. Spurred by American corporate interests several hundred Puerto Ricans migrated to Hawaii to work in the cane fields, substituting the need to import sugar laborers from Japan. American corporate control (initially agriculture and later manufacturing) together with the control of the Navy, because of defense needs, the set the standards for the new rule of law.

By making an exception, a government, even a liberal democracy, accommodates groups that the leadership finds undesirable or difficult to integrate into the Nation, but that the controlling interests of the government of that Nation find profitable, useful, or necessary to their objectives. Justification for exceptions are always made in terms of the great service to those denied equality, even enhancing their possibilities for survival, but reality is another: all exception serve the powerful, not the powerless.

Some exceptions have led to immense destruction, particularly during the Nazi era, but also in the treatment of Irish Republicans in Great Britain, Bretons in France, Catalonians and Basques in Spain under Franco, and other minorities throughout the world, including Native Americans in the Nation and the descendants of African-American slaves after the Reconstruction.

In the case of Puerto Rico local interests, ranging from political parties, to banks and financial institutions, and even churches and other NGOs have supported this system because of very specific and, at times, immense benefits to them. Many of them still support the separate and unequal treatment of Puerto Rico since they are part of the clientelism that defines the relationship of Puerto Rico and the U.S. and Puerto Ricans and the U.S. government.

Fundamental premises of this paper

- The basic proposition in this paper is that the state and its allied institutions are a clear and present danger to human beings when allowed to run unchecked.
- A second proposition is that this danger becomes an absolute reality when the polity excludes any group from exercising the political powers that can redirect or curtail the powers of the new lord god- the state.

I will demonstrate that:

- Rule by exception in Puerto Rico – the relationship imposed by the U.S., in many ways the most vibrant democracy in the world - enabled, led, enticed and, perhaps, forced Puerto Rico into the current financial and economic disaster.
- Secondly that the state, government and the political system and parties have robbed the islanders of initiative and liberty through subsidies and transfers of money since the Roosevelt's New Deal and particularly since the Johnson's Great Society and

- Consequently, that the federal government corrupted American liberal democracy through the use of a parallel rule of law that is adequate for an emergency but cannot be the standard of government for individuals under the American flag who have been American citizens for the past one hundred years.

The glaring result is the near failure of Puerto Rico as a state because of financial problems caused by immersing Puerto Rico in an economy in which it cannot participate fully because Congress has denied certain means of involvement through legislation that sets it aside from the states. I use the studies herein quoted by Pelzman, the Brookings group, Joffe, and Hexner and Jenkins on the negative and positive effects of the U.S. government influence on a crisis that to some began building up during WWII, with the Tugwell Administration and the institution of Commonwealth, to others from the time that Governor Rafael Hernandez Colón deviated from the recommendations of the Tobin report of 1973. This will be the main thrust of this paper.

Exceptions have unintended results in the fabric of government and society.

There are other consequences; one of which is what is “getting what you can from whitey,” an apt phrase since the set aside was originally devised, as shown by Judge Juan R. Torruella⁴, because of the all-pervading racism in the 1900 Congress, Supreme Court, and Presidency. Judge José A. Cabranes⁵ takes up the theme of separation of Puerto Ricans even after they became citizens in 1917.

Skirting the special rule of law for Puerto Rico- exercising their individual liberty and inventiveness- became something of a challenge for locally elected governors.

1. Local molasses production had declined as a result of the drive of the Popular Democratic Party to substitute the sugar cane industry with industrial manufacturing at mid-century. During the Carlos Romero Barceló administration (1976-1984), the government imported molasses to make rum which, in turn would be exported to the U.S. under a proviso extant since the early century that allowed an excise tax on rum exported to the U.S. This would be disallowed subsequently.
2. During the second Rafael Hernández Colón Administration (1984-1992). There was an effort to obtain treaty making power through a tax sparing agreement supported by the U.S. Commerce Department. The treaty would have become effective had the Task Force Chairman for Puerto Rico Andrew Card not been advised of this effort which had no input from the U.S. Department of State and the White House charged with policy issues pertinent to Puerto Rico. The treaty was disallowed.
3. The Luís Fortuño Administration submitted a legal study to I.R.S. that allowed taxes paid in Puerto Rico by American Companies to be applied to taxes that were owed in the U.S., much as is done with state personal income tax payments. It received a tentative approval but I.R.S. had yet to accept the interpretation on a final basis. The income received from these companies is some \$2 billion a year, over 20% of all state revenue.
4. Government was not the only spirited fighter. When the U.S. reached an agreement with Japan to have the latter curb its exports of cars to the U.S., Puerto Rico was not specifically mentioned so it was possible for local car importers to bring Japanese cars into Puerto Rico and re-ship them to the U.S. The practice was eventually quietly discontinued, but until that happened one could drive around the Newark, New Jersey area and see the name of the Puerto Rico importers prominently displayed in a car-lot several acres large.
5. Some state government agency heads were also most artful. There is a proviso in The No Child Left Behind legislation that allows federal funds to become state funds, and be used fully for state purposes. When the totality of the school is defined as eligible for NCLB Title I funds, said funds if not spent after being assigned to a school, become state funds at the end of the year and revert not to the U.S. Government but to the state education agency or local education agency that was used as a pass through for the school. In Puerto Rico,

⁴ Juan R. Torruella, **The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal**. University of Puerto Rico Press, 1988.

⁵ José A. Cabranes(with Kate Stith), **Citizenship and The American Empire** (Yale University Press,1979).

regularly the funds assigned to the Department of Education did not fully cover pay roll expenditures, so the SEA withheld these funds well into the school year so they would not be fully spent, and thus revert to cover state payroll deficiencies.

6. During the month of July 2017. The Puerto Rico Institute for Statistics, an independent body in government, analyzed a change in the collection of data in 2017 to project government income. It pointed out that the method used from 2005-2006 overestimate the income from sales because of faulty methodology; in 2016, overestimation was of \$10 billion. This was due to the inclusion in the sample used of very large commercial enterprises that had gone broke since that time, so income was inflated. Statisticians from the Institute had advised government of this inflation, but government paid no heed until 2017. There were also other methodological problems. The end result was that the sales tax projections were inflated by several billion; the sales tax, in turn, guaranteed the payment of special bonds issued by a government corporation (COFINA). This allowed for a significant amount of bonds that would be sold by COFINA without the backing specified by government. On the other hand, had the investors looked at the U.S. Economic Census, they would have been able to correct their information.
7. As a result of the financial bubble bursting in the U.S. and its consequences in Puerto Rico, one of the financial institutions was accuse of “recycling debt.” Clients would use the credit their bond holdings gave them to buy more bonds through the financial services company. This is illegal. The end result was that it inflated the value of the bonds by creating an artificial; demands. This was not totally different from the requirement of the state government for financial cooperatives to buy state bond, again creating an artificial demand that raised the price of Puerto Rico bonds.

On the other hand, not all the thrust of governing has gone into exercising liberty. I would like to suggest that island leaders, just so they could enjoy the perquisites of power- used entitlements and federal transfers to promote quietism in the population. None turned out to be angels. In turn, the federal government used these transfer payments to prop up the economy and to justify, in some measure, the immense federal tax benefits afforded American corporations that settled in Puerto Rico.

But then, this is not a perfect world, nor do most human beings aspire to perfection. This is the stuff of politics.

The U.S. used the exception if Puerto Rico in its foreign policy thrust.

Operation Bootstrap, touted as the American answer to communism during the Cold War, was not an economic development but a job development program. Economic development through the expansion of local capital tends to be self-sustaining; job development is based on continued dependence on the source of these jobs, and the source was U.S. corporations. The model was one for dependence on U.S. corporations. The U.S. tried to force it on the Dominican Republic after the assassination of Trujillo.

The measurement of success in Puerto Rico was in jobs promoted and factories established through the tax abatement program, not by new, local factories or local capital development or even GNP per capita. In fact, the specific measure was GDP per capita, so income derived in Puerto Rico from manufacturing and financial operations of tax-abated companies that went back to the U.S., was allowed to be used as a measure of “development” when the money and profits in a “gross” measurement went to the states. The deception was supported by U.S. and state government studies (vide General Accounting Office studies and Congressional Budget Office studies until the 1990s), by local economists and most outside economists until the 1980s.

Nevertheless, the program provided immense wealth to be deposited in banks and re-loaned with a great spread to local businesses and construction programs. It also benefited the local political party system by increasing cash flow and jobs in government.

In 2006, a Brookings Institution study of the economy of Puerto Rico⁶, the tax abatement program and the overall welfare policies of the federal government in Puerto Rico were severely criticized because of their negative effects in Puerto Rico.

In 2002, Pelzman had been most damning of the development program while some local politicians were still trying to revive it.⁷ Countries with development programs that

predominantly rely on tax measures as the exclusive carrot in their development strategy... make an error in ignoring the there is a differences between imported capital that is used to drive the economic growth of an economy by investing in the human capital intensive or manufacturing sector from the imported capital that is induced by a desire to shift income for tax purposes.

...Puerto Rico, dubbed the .great miracle which over time turns out to be no miracle at all, but rather a case of Puerto Rico becoming entrapped in a false promise of economic growth originating from imported capital driven by tax incentives. This dependency on external capital as the driver of its economic growth has forced various Puerto Rican administrations to continuously focus on maintaining the distortionary tax programs under the corporate threat of capital flight rather than focusing on the fundamental problem of Puerto Rican economic development.

One of the main conclusions of this report is that in Puerto Rico, as in many other similar situations, short ... The results from Puerto Rico are thus consistent with the general observations that a development program designed predominantly on the basis of distorting the rate of return on foreign capital will fail to achieve its goal. Unless there are other structural inducements to foster the continued investment in a particular state or region, the returns to this strategy are very limited to the transfer of income across borders. That is indeed the case in Puerto Rico. The industries that have been affected by these imported capital have not sustained up or downstream magnification effects.

The conclusion one reaches after looking at the macro data is that Puerto Rico's post 1970 economic development did not benefit from a structural change as a result of the entire set of tax holidays. There was no major shift in technology into Puerto Rico. There was no sustained downstream economic development. On the contrary, the islands economic development strategy appears to be held captive to continued reliance on these tax distortions.

In 1996, Hexner and Jenkins had demonstrated the failure of the 936 program in its state goal of economic development and even job development.⁸

The 1986 book of James L. Dietz⁹ on the economic development of Puerto Rico concludes thusly,

Operation Bootstrap, then, is monument not to economic progress but to the costs and dangers inherent in a development program based upon capital-intensive, foreign-owned, vertically integrated, and export-oriented

⁶ Susan M. Collins, Barry P. Bosworth and Miguel Soto-Class, editors. **The Economy of Puerto Rico – Restoring Growth**,. Brookings Institution, 2006.

⁷ Pelzman, J. (2002 December) "Imported Capital Dependency as an Economic Development Strategy: The Failure of Distortionary Tax Policies in Puerto Rico." **Center for Economic Research**, Discussion paper No. 0301, George Washington University. https://www.google.com.pr/search?sourceid=navclient&ie=UTF-8&rlz=1T4ADRA_enPR488PR489&q=Imported+Capital+Dependency+As+an+Economic+Development+Strategy%3a+The+Failure+of+Distortionary+Tax+Policies+in+Puerto+Rico

⁸ J. Tomas Hexner and Glenn Jenkins, "**Puerto Rico and Section 936: a Costly Dependence**." "10 Tax Notes International, 235. 1996. http://www.queensjdiexec.org/publications/qed_dp_119.pdf

⁹ James L. Dietz, **Economic History of Puerto Rico: Institutional Change and Capitalist Development**. Princeton University Press, 1986. Pag 309.

corporate expansion. This experience has been carried out more fully in Puerto Rico than any other country in the world, and the island's experience should serve as a lesson for other nations in what not to do.

James L. Tobin's study of 1976 specifically says that Puerto Rico should not continue to dependent of its bonding capacity for public works but should be able to reduce its exposure by increasing government capital outlays from recurring funds for these expenses. The Tobin study was specifically directed to the financial condition of Puerto Rico. In 1978, Tobin won the Nobel Prize for Economics. The 1976 Tobin Report on the finances of Puerto Rico to Governor Rafael Hernández Colón¹⁰ advises of dire times ahead

Puerto Rico faces several years of fiscal, financial and economic austerity. Drastic adjustments are required; especially painful because they involve the postponement of expectations deeply entrenched in the economic and political life of the island during the era of rapid industrial growth and abundant external finance. The adjustments are necessary to lay the basis for renewed growth. They must be made. The only question is whether they are made in a timely, orderly and equitable manner, or whether they are deferred until the exigencies of a financial crisis compel them to be made in haste. Fortunately, you and the officials of your government concerned with economic and financial management recognize the urgency of the situation. This has been demonstrated by the measures already taken to increase tax revenue, to control government outlays and limit the Commonwealth's debt issues. Measures of this kind will have to be resolutely pursued in the coming years.

Irizarry Mora, a Puerto Rican economist, in a review of the recommendations to the state government in finance, says that the first criticism of the Operation Bootstrap model was made by Jenaro Baquero who said that growth through importation of capital and financing through bonds would result in having to declare bankruptcy.

Jesus Dávila provides a short history of the role of the U.S. in Puerto Ricans excesses in selling bonds. (Interpreted by Carlos E. Chardon)¹¹

Insolvency and unpayable debt of Puerto Rico have a historical background in decisions taken by the United States with respect to this Caribbean colony in 1900, 1917 and, above all, 1961... According to historical records on debt, reviewed by NCM news, since at least 1900, USA established as strategic policy the indebtedness of Puerto Rico and by...1959 it was double the budget. In spite of this, in 1961, Congress repealed the restrictions on the total amount owed. Jenaro Baquero, a government advisor, suggested that Puerto Rico's judgement day would come as a result of this Congressional action. He predicted that the flow of funds out of Puerto Rico would be greater than the flow coming in.

Baquero warned that, before that, we should develop a surplus of exports "or otherwise will have to ask for help or declared bankruptcy and expropriate or nationalize the investments or foreign earnings on the island". Of course, warnings and forecasts of Baquero had no echo in the politics of the insular Government, much less in Congress, which preferred to listen to the President of the Government Development Bank, Rafael Pico, who ensured that release the margin of the credit represented no risk because Puerto Rico was "conservative" in issuing debt.

A question of predisposition.

¹⁰ Rafael Hernández Colón, "Current pains and the Tobin Report," column@caribbeanbusinesspr.com Edition: October 1, 2009 | Volume: 37 | No: 39.

¹¹ [Jesús Dávila](#) "Puerto Rico: El endeudamiento en la estrategia colonial" **America Latina en movimiento online (ALAI)** <http://www.alainet.org/es/articulo/176192>. San Juan, Puerto Rico March 21, 2017

My outlook is somewhat Hobbesian. Ernest Becker explained the role of the state in allaying fear but also in generating fear through man's use of the institutions to serve the baser nature or instincts of the leaders. Institutions are not peopled or run by angels, and the venality of man and capacity for evil are keys to the current predicament of Puerto Rico. Becker's fundamental thrust is that the fear of death generates the need for religion and another is that the mortality of man generates evil. I would like to suggest that in civil religion, the state is god.

Becker was a political philosopher known for his terror management theory. He wrote **The Denial of Death** and **Escape from Evil** in the 1970s. Becker's indictment of man was so destructive of all he had stood for, that he asked that **Escape from Evil**, not be published immediately after his death). It was a testament of despair; this is why I do not personally subscribe to the absoluteness of the indictment. Yet I tend to agree to a tendency towards disregarding other human beings unless they belong to the family, the tribe or the community, even to the nation-state. The tendency is most evident when the stability of one's place in the world (family, community, or town) is threatened.

Necessarily, then, this paper, beside exploring these propositions is also a hurried look into the ideas of god-the state, government-the son, and the political system and parties- the holy ghost. This will not be the only time I exercise my liberty in use the use of the Christian concept of the holy trinity. I picked up the concept from Carl Schmitt and Georgio Agamben. Sara Grusky who argues that¹² ...

that the tight coalition of corporate, financial, and state interests on the island is, in part, the result of U.S. tax policies designed to bolster the Puerto Rico government's financial situation and also to ensure that it is highly integrated into a U.S. corporate sphere of interests.

Whence the concept of the state of exception?

Georgio Agamben built a history of the transformation of the state into god to explain the thesis that the exception to the rule of law and the political way of government are an integral part of liberal democracy. Before Agamben, Carl Schmitt wrote on political theology and Agamben, many years later, picked up his train of thought although not all his ideas or consequences. Since then, not a few Americans political philosophers or theorists have jumped unto this train of thought, Bruce Ackermann among them.¹³ It seems that the **state of emergency** and its corollary, the **state of exception**, are part of America's way of life.

Schmitt supported the extermination of Jews, Roma, homosexuals and disabled in Nazi Germany. This does not mean the USA will do the same; it means that our government and Fascism seem to share a common ancestor, much as man shares one with chimpanzees and gorillas. One of the distinguishing elements between apes and humans is the capacity for the idea of liberty; Andrés Córdova, a law professor at InterAmerican University, reminded me that the exercise of liberty is

¹² Grusky, S.L. "Political power in Puerto Rico: bankers, pharmaceuticals and the state." **Studies in Comparative International Development**. Spring 1996, Volume 31, Issue 1, pp 48-64
<http://link.springer.com/article/10.1007%252FBF02802958>)

¹³ See also, **William E. Scheuerman**, Between the Norm and the Exception: **The Frankfurt School and the Rule of Law**. The MIT Press, 1994. But also the examination of executive privilege by Edwin Kent Morris's "Executive Privilege: The Sovereign Exception in Action in **Spectra**, **The Aspect Journal**. Vol 2, No 1 (2012)

properly a moral and transgressive act and also of Nietzsche's saying that "That which is done out of love is beyond good and evil."

Horton wrote on the exchange of letters and writings of Schmitt, Conservative Catholic, and Walter Benjamin, liberal Jew¹⁴ who committed suicide rather than fall into the hands of the Nazi,

Benjamin's eighth thesis is clearly the final word in their dialogue, and it takes suitable weight. Benjamin asks us to examine carefully the historical validity of the state of exception—in essence, has the exception become the rule? In Roman history, for instance, the term-limited dictatorship created by special circumstances ceased to be a real state of exception with the rise of Caesar Augustus—the exception was the rule. But in the Germany of the Third Reich, under the exception that Schmitt personally helped to craft, the exception had in fact emerged as a new state. Benjamin is clearly referring both to the transformed Germany of the time of his writing, and to his long-standing dialogue with Schmitt about this process. But Benjamin rebels strongly against Schmitt's accomplishments. He does so as a historical materialist, with an idealistic vision of history and progress—so he bitterly challenges the notion that fascism's successes at this point are historically driven. A better grounded historical analysis must recognize that for all its apparent potential (in 1940, as fascism approached its historical zenith), it was not a tenable system—it could not be sustained. This is no less a criticism of the "state of exception" theorizing of Schmitt, which had helped fascism to a legally presentable model of the state.

Benjamin's writing has obvious significance for America in her current posture. The period of Schmittian exceptionalism has been endured, and a strong critic of those ideas has assumed the mantle of executive power. But it is far from clear at this point that the exceptional powers assumed quietly for the executive will simply be surrendered. The experiences of the oppressed would, as he writes, speak against such an assumption. To the contrary, the gains for the national security state of the past decade are now being hard-wired. In this process, we face the obvious question to which Benjamin alludes: is the exception now being made the rule? Historical judgment is required to answer this question, and as Benjamin notes, such historical judgment cannot be exercised without a philosophy of history.

The **state of emergency** is generally, but not always, tied to war. Governor Fortuño declared an emergency on learning of the condition of state finances in 2009. What is then this state of emergency? It is a temporary suspension of the rule of law and of some of the rights of institutions and of human beings. Again, Córdova noted that Kafka claimed that law requires the submission of liberty.

So much for the **state of emergency**, a temporary condition.

What is the state of exception?

Exceptions have been very much a part of American political history; some examples will be provided. These exceptions are part of the founding myths of the nation. They predate Fascism.

Why go back to Ernest Becker who wrote half a century ago in speaking to persons that were not alive at the time? Why go back to Schmitt who wrote ninety years ago? For that matter, why return to the idea of god as ensconced in the Bible?

¹⁴ Scott Horton, "Benjamin – History and the State of Exception" **Harper's Magazine**. May 15, 2010.

Human beings pass away. Ideas become part of what Roger Bartra¹⁵, Mexican anthropologist, has called the exocerebrum, a concept not dissimilar from Jung's archetypes that are part of the unconscious.

Now to the definition: **an exception is a permanent state of emergency**. It is the institutionalization of a special rule of law for a specific group, outside the general rule of law of the nation.

How did this come about in Puerto Rico? The designation of the Spanish Islands as unincorporated into the nation brought a parallel rule of law; the leaders of the nation established the exception - a state of exception if we are to believe Juan A. Torruella and José A. Cabranes, respectively of the First and Second District Courts of Appeals of the federal government, because we were deemed incapable of being equal and of understanding Anglo-Saxon liberties. But then, during the early 1900s, few in the nation believed that man in the tropics would be able to rise to the standards of our nation.

Is this way of thinking truly gone? Does not the financial hole into which Puerto Rico dug itself support this way of thinking? Ideas seem to lie in waiting from the appropriate moment and then spring on a human beings, bringing together expedience, experience and knowledge.

The exception that ties Puerto Rico to the U.S. is the result of the venality of man and a specific arrangement within American democracy yet accepted by Islanders. The dominant Puerto Rican leader called referred to himself as a "posibilista", perhaps pragmatist would be an adequate translation if the philosophical aspects of the term are excluded. Unlike the Philippines, there was no leader in Puerto Rico of the pugnacity of Aguinaldo, who continued to wage the war of liberation of his nation beyond the Spanish-American War.

The specific context of the actions of the nation was its past support of slavery but also the generalized belief in the incapacity of women to rule and African-Americans, Native Americans and people in the tropics to govern themselves. This belief eased the transition of the state of emergency into the state of exception.

This was the time that most Confederate statues were put up in the South as a demonstration of its control of U.S. government through Congressional arrangements and U.S. Supreme Court Justices.

This propensity was strengthened by vicious behavior by our national leaders and the destructiveness of islander leaders. I remand you to Becker who says in his introduction to Escape from Evil (already quoted)

My previous writings did not take sufficient account of truly vicious human behavior... the data that show(s) what a horribly destructive creature he has been throughout his history...

¹⁵ Roger Bartra. **Anthropology of the Brain : Consciousness, Culture, and Free Will**. Cambridge University Press, 2014. But also see "On Consciousness, A series of conversations between Riccardo Manzotti and Tim Parks" in **Never Not here**. <http://www.nevernotthere.com/forum/unmissable-consciousness-series-conversations-between-riccardo-manzotti-and-tim-parks>

Becker's position is not unlike that of the Founding fathers. Human beings die; ideas tend to persist. "Men are not angels", said James Madison more succinctly than Becker, and adds that this is why the powers of the state must be curbed in order for government to be just.

In yet another of his books,¹⁶ Becker gives us some solace.

... man is mostly innocent, really potentially good, even naturally noble; and as we will stress, society I responsible, largely, for giving them opportunities for unfolding more freely and more unafraid. But this is confused and complicated by man's basic animal fears; by his deep and indelible anxieties about his own impotence and death, and his fear of being overwhelmed and sucked up into the world and into others.

As I continue the quote, please note the sentences I underlined:

All this gives his life a quality of drivenness, of underlying desperation, and obsession with the meaning of it and with his own significance as creature. And this is what drives him to make his mark on the world, to try to twist it and turn it into his own designs, to bury over the rumbling anxieties; and this usually means that he tries to twist and turn others, make his mark on them, use them to justify his problematic life.

What have I done til now?

1. I have confronted your most cherished beliefs about the U.S. I do not want to change them but to put them in another perspective. Once achieved, it is possible to bring together ideas that seem to have similar origins, particularly in Europe. These ideas had consequences: the burning of witches in Massachusetts, the Spanish Inquisition, St. Bartholomews' Day massacre, the murder of thousands of Filipinos who would not put down their arms after the Spanish armistice, etc. but also the Ku Klux Klan, the Knights of the Camellia, the American Israelite Church, etc.
2. Also, I brought together the concept of the exception which is born in an emergency and is the answer of a state, even a liberal democracy, with the James Madison's idea that we are not angels. Our nature is made of less exalted matter than that of angels even if made in the image of Our Lord. A sow's ear made into a purse does not turn into silk.
3. I also accepted that man is the agency, the perpetrator, but pointed out that the structure of power, particularly the absence of some political assemblies that protect citizens from the vagaries of the powerful such as electing those that ultimately rule them (Congress and the President), is the context of the exception.
4. I also seem to have identified a pattern in Puerto Rico and the U.S. Streeck¹⁷, a German economic institutionalist, would warn,

Pattern recognition is a matter of intelligence, intuition, and experience. Can you ever be sure the pattern you find is really there and is the "relevant" one? Never. But if and when you are sufficiently confident that what you have found can stand, at least for a while, you can release it for others to inspect it and wait what they have to say and, more importantly, if it helps them get ahead in their efforts. Scientific progress is a collective product, not an individual one, and it depends on people taking a risk with their work treating it as an investment in their own reputation and in collective cognitive progress at the same time.

5. I have thrown my ideas out for examination.

¹⁶ Ernest Becker, **The Birth and Death of Meaning: an Interdisciplinary Perspective on the Problem of Man.** New York, Free Press, 1971.

¹⁷ Wolfgang Streeck and Agnès Labrousse, "Order is an exception, not the rule: An interview with Wolfgang Streeck." **Revue de la régulation: Capitalisme, institutions, pouvoirs**, Spring 2015.

American colonies and the exception

I will endeavor to have you follow the stages through which Puerto Rico went under the suzerainty of the United States. Like all such conceptualizations, stages are part of a continuum, but broken down into what we would call “eras” in history.

- Some historians would have you believe the nation purportedly went into war to stop the German Empire from absorbing the Spanish islands, thus encircling the U.S. through a control of half the Pacific to Guam and the Mid-Atlantic and Caribbean to Puerto Rico. The argument is well documented, but the cause is insufficient.
- Consider that at the time, Germans had settled in thousands in mid-Western states, much as Muslims have settled in some of these states and elsewhere. Curbing the rights of first generation German Americans was part of the political campaigns of 1900, 1904, 1908, and 1912. In fact Wilson, Taft and Teddy Roosevelt running on a third party, out did each other in heaping scorn on the German interlopers in 1912. The nation had its fill of German Catholics. This is the context of the crisis brought about by the Spanish population acquired during the Spanish American War.
- Other historians would emphasize the need to open new markets when at the time the principal product traded within China by Boston businessmen was opium. The U.S. had just come out of a financial crash resulting from overproduction and needed to secure the commercial routes to South America and to China, but also was considering the potential of a Panama Canal and Puerto Rico was a key port for the defense of U.S. interests in that eventuality. Tied to commerce and to defense was the need for coaling stations; the U.S. tried to convert the Dominican Republic into an American territory in 1871 and turn the Samaná Peninsula on its extreme northeast into a coaling station for commercial and war ships. Again, the argument is well supported, but it is insufficient.
- Yet others would suggest, using Fredrick Jackson Turner’s thesis of the creation of the nation through the opening of the West, that having won the West, the U.S. needed yet other natural boundaries and these were the Philippines and Puerto Rico. The argument is somewhat overstretched, and not sufficient.
- Other historians would emphasize the desire to free Cuba from oppression and this idea was tied to the rabblousing articles and editorials by Pulitzer and Hearst newspapers calling for a crusade to free Cuba. In this category would be the sinking of the Maine, an American warship in the port of Havana. Given our tendency to think very highly of ourselves, this is the argument generally bandied in high school text books. Other reasons can be adduced since going into war has multiple reasons and rationales, not the least the conversion of heathens and Catholics to Protestantism.

Still, wars will produce states of emergency.

The first stage of American suzerainty was a **state of emergency** when Puerto Rico was ruled by the U.S. Army (1898-1900). Had the U.S. returned to its republican democratic form, turned back its troops and recognized all the Spanish Islands as independent, as it did in the case of Cuba, the state of emergency would have ended with the war. This did not happen because Germany would have continued the growth of its empire; because of commercial considerations, because the U.S. missionaries wanted to free the Spanish Islands from Catholicism just as they had freed the Hawaiian Islands from animism. Again, the reasons are many.

There was a confrontation between the set ways of government and the politics of governing with an unexpected situation: almost ten million additional human beings and what to do with them. John Popock calls the conflict between the regime and the unexpected political situation a Machiavellian moment; to Machiavelli it is *il accidente*. Our leadership deemed impossible and

also undesirable the absorption of the population of the Spanish Islands into the nation so the emergency was transformed into an exception, a different set of rules for the different.

How different were islanders? Some adduce that Puerto Ricans were not that different, but difference is like beauty, in the eye of the beholder.

Most Filipinos were Malays with some Melanesians and Africans and some Spaniards and a sprinkling of European, Japanese and Chinese traders; the majority were animistic in religion, the second grouping were Catholic, mostly around Manila and the larger cities, and closely behind were the Muslim, occupying entire islands, and Taoists and Buddhists in smaller enclaves. Languages varied from Spanish to Chamorro in Puerto Rico and Guam, to Spanish, Tagalog and similar preliterate languages in the larger Philippine Islands and several dozen variations of the main languages in the smaller islands. The nation was faced with Babel of its own making.

What was *il accidente*? The nation had seventy million inhabitants and the Spanish Islands would have had more than one tenth of the congressmen in Washington if they eventually became states like all other territories. *Il accidente* demanded that politics overcome the rule of law and institute a parallel one.

In sum, the exception is not lawlessness but a parallel rule of law established by the powerful to govern the powerless. On instituting what the U.S. called civil government (Foraker act, 1900), which was little more than the personal rule of the President of the United States, Puerto Rico came fully under a **state of exception**. It has remained so since then.

Islanders played at having become something else as a result of being allowed a Constitution in 1953, but several Supreme Court decisions in the 21st century, tied to the occupation by Congress of Island sources of government income through a financial stability board, proved Islanders had deceived themselves or allowed themselves to be deluded by the U.S.A.

Some Islanders were quite happy and most tricked themselves in believing that the U.S. would eventually recognize them as equals. Islanders were first disillusioned, then unbelieving, and by mid-century they were delusional: they actually believed Commonwealth was good for them and that the lack of substantive political powers was the best of both worlds. This was built on the welfare programs designed by Roosevelt for an industrial-agricultural economy but applied to Puerto Rico, a plantation economy.

Rule by exception is generalized and very old in the world.

Unincorporation, the territorial definition applied to Puerto Rico, the Philippines and Guam, was designed by Congress in 1865 to govern one of the guano islands in mid-Pacific. Guano is the excrement of birds and bats; until the mid-20th century, it was extensively used as fertilizer. So much for those that believe that we were held in some esteem.

The racists in Congress and the Supreme Court as well as the Executive seemed to have found that the population of the Spanish Islands was more akin to birds and bats than to the Anglo-Americans ruling the nation. After all, Islanders spoke a language as alien to English as the chirping of birds and bats- Spanish. The Spanish islanders came in varied colors much as the birds and bats. Islanders had a different legal system and their traditions must have been more similar to the ways

of birds and bats than to Anglo-America. Before we claim uniqueness, like all good nationalists, African-Americans or Native Americans did not count as human beings at that time in the Nation. Difference also created variations in the one statutory citizenship.¹⁸

Molokai, the leper colony in the Hawaiian Islands, was an exception; so were the areas separated in cities and towns in Europe for those suffering from the black plague or from leprosy, but also so were the Jewish ghettos since the Middle Ages. In fact, quite a few local politicians during the 19th century promoted the rule of Puerto Rico by Spain through special laws, as a way out of direct rule by the monarch. Perhaps this helps explain why Islanders accepted readily the relationship proffered by the U.S.

The state of exception and exploitation: The Plantation

The state of exception seems to have gone through various transformations even though it is substantively the same as that devised more than 100 years ago by Congress and the U.S. Supreme Court.

In politics we like to use the metaphor of masks. Self-government was but a mask for exploitation of its cheap labor force from the early 1900s until the middle of the century by U.S. sugar producing corporations which assured maintenance of this condition and their benefits until local labor legislation made them comparatively unprofitable – other sugar lands gave less labor protection to their citizens, so they chose these other venues.

The profits on sugar cane had been protected for many years through a guaranteed price established by the U.S. called the sugar quota wherein the federal government guaranteed the price of sugar against world wide variations. The U.S. was the largest consumer of sugar in the world and could not afford to have its sugar state-side industry destroyed by outside competition, so it guaranteed prices not only for its beet sugar producers but for the coastal and territorial producers. It also used the quota in its foreign policy, extending it to Cuba and Dominican Republic where American corporations had substantial sugar holdings, and later to other countries.

In 1789 the U.S. imposed duty on imported sugar to raise revenue; at the time, there was no income tax, corporate or personal, so revenue to run the country came from such tariffs. Thus the American sugar industry developed in a protected market: the beet sugar industry inland in Michigan, Nebraska, Colorado, Utah, Michigan, Oregon, North Dakota and the sugar cane industry on the coastal lowlands such as Louisiana and Florida. By 1890 the tariff was substituted by a direct subsidy for sugar producers and within a decade private industry developed formal institutes to study the production of sugar. In 1898, the U.S. took over Puerto Rico, and within four years American sugar growers and manufacturers set themselves up in Puerto Rico, controlling, by 1930, one-fourth of all raw sugar production and almost all refined sugar manufacturing.

By 1910, as a result of the influence of Louisiana growers on sugar production in Puerto Rico, there were graduates of these institutes in most large sugar mills on the island. The U.S. was the principal consumer of sugar in the world by 1900.

¹⁸ See José A. Cabranes, **Citizenship and the American Empire**, Yale University Press, 1979. Cabranes is a Second Circuit Court of Appeals Judge in the federal government.

The sugar tariff had been reinstated re-instated in 1894; by this time the Dutch East Indies and parts of Africa were producing sugar cane and the Central European countries were producing beet sugar. World War I devastated beet sugar production in Europe so world sugar prices rose dramatically, allowing for a bonanza in Puerto Rico and the Dominican Republic. But within a year after War ended, Europe was back into production and prices dropped dramatically.

The Sugar Act of 1934 (also known as the Costigan Act) put quotas on domestic sugar and on foreign imports; its provisos included marketing allotments and labor provisions. The U.S. Department of Agriculture apportioned the quotas which included how much could be produced in Puerto Rico but also how much could be bought in Cuba which had a sugar industry controlled to large measure by American producers. The Costigan act favored large sugar producers in Puerto Rico since it was directed at both farmers and sugar mills grinding the sugar cane. Because Islanders could do little to protect themselves for lack of Congressional representation, smaller producers went out of business. This was the exception at work.

American sugar farmers were also paid a direct subsidy of one-half cent per pound of sugar they produced. In Puerto Rico, because of **the exception**, money allotted to farmers was directed into an agrarian reform program known as the Chardon Plan. Again, this was the exception at work. By 1942, because imports from Puerto Rico and other parts of the world were curtailed by German submarine warfare against merchant ships, sugar rationing for industrial, institutional users and American citizens was imposed. As the economy improved, sugar rations ended in 1947. During WWII Puerto Rico turned part of its sugar into two commodities in high demand: alcohol for industrial –war effort and rum for the population in the U.S. that could not continue to import whisky as freely was before. This provided a bonanza that led to increased sugar production peaking in 1952. By then, sugar began declining.

The Minnesota Reserve Bank study elsewhere quoted attributes the decline to the labor policies and the land redistribution program of the Popular Democratic Party. The Popular Democratic Party, with the support of the Roosevelt administration, particularly Governor Rexford G. Tugwell and a plan approved by President Roosevelt that brought the New Deal in force into Puerto Rico, the Chardon Plan, devised mechanisms to distribute corporate wealth and break down their political power.¹⁹

In the mid-to-late 1930s, national income rebounded—largely due to increased government spending. As a proportion of national income, the government sector increased from 20.7 percent in 1934 to 32.1 percent in 1939.¹⁷ Much of this growth is related to the establishment of the Puerto Rico Reconstruction Administration, a New Deal program that funded more than 100 work projects around the island.

Rexford Tugwell, appointed by Franklin Delano Roosevelt as Puerto Rico's governor in 1941, believed that radical steps were necessary to improve the island's economy. Tugwell was a Columbia University economist who visited the Soviet Union in 1927. Impressed with the Soviet state's ability to produce goods and distribute prosperity more broadly, he hoped to bring the benefits of central planning to the United States.

During Roosevelt's first term, Tugwell helped create and implement a number of New Deal programs, including the Agricultural Adjustment Administration, which paid farmers not to grow food. As governor of Puerto Rico, Tugwell created or expanded a number of public corporations. These included the Water Resources Authority (which later became the Electric Power Authority, PREPA), the Aqueduct and Sewer

¹⁹ Marc D. Joffe and Jesse Martinez, "**Origins of the Puerto Rico Fiscal Crisis**" **MERCATUS RESEARCH** at the Mercatus Center at George Mason University Released: April 2016 <https://www.mercatus.org/system/files/Joffe-Puerto-Rico-Fiscal-Crisis-v1.pdf>

Authority (PRASA), the Transportation Authority (which later became the Highway and Transportation Authority, PRHTA), the Land Authority and the Government Development Bank (GDB). Public corporation borrowing also began under Tugwell in 1944. The Water Resources Authority issued a \$20 million bond to purchase the Porto Rico Railway, the Light and Power Company, and the Mayagüez Light, Power, and Ice Company—effectively nationalizing most of the island’s electric power supply. After this initial issue, public corporation debt grew rapidly—reaching \$50 million in 1947 and almost \$100 million by 1952. By the early 1950s, both the Transportation Authority and the Aqueduct and Sewer Authority had joined the Water Resources Authority in issuing debt. The rapid growth in borrowing by public corporations contrasted with relatively restrained debt accumulation by the insular government (later known as the commonwealth government) and by municipalities.

The Puerto Rico Reconstruction Administration (PRRA) was patterned after the Tennessee Valley Authority with the difference that in Puerto Rico, the entire jurisdiction fell under the control of these corporations. Within three years of its inception, the PRRA had a larger budget than the state government and consequently became the principal source of jobs for Puerto Ricans; while both the governor and the administrator of the PRRA were presidential appointments, the governor was somewhat beholden to the power of the locally elected legislature. This was not the case of the PRRA.

Islanders fought back; politicians fought back against the control of so many resources by a federal agency and other islanders fought back against the American sugar barons that controlled Island legislation through Congress: increased local agricultural minimum wage and decreased working hours and holding out every year on signing the labor agreement with each sugar mill. The effect was that grinding sugar cane would be postponed throughout the months of October, November, December—generally dry- until February, March and April- generally wet so plant growth would go into development of cellulose rather than sugar. This strategy, plus slow-downs, made sure the quota was not met, but the costs remained ever higher because of local legislation. The exception leads into destructive fights.

Other innovations or variations of practices in the U.S. are identified by Joffe and Martínez. In the abstract of a study of Puerto Ricans finances²⁰, they essentially point out the uniqueness of the course set by the U.S. for Puerto Rico; this uniqueness is what is called in this paper “the exception.”

Puerto Rico’s heavy public-sector debt burden is the unintended consequence of a series of policy decisions extending back to the US takeover of the island in 1898. Rather than placing Puerto Rico on a path to statehood, Congress imposed a series of unique governing structures on the island. Today, the Commonwealth of Puerto Rico stands in stark contrast to most American states because it has no meaningful constitutional limits on central government deficits and debt accumulation, while at the same time it operates a number of public corporations that have unsustainable debt loads. Relative to American states, Puerto Rico’s government has poor fiscal transparency, low levels of public employee pension funding, and excess government staffing. To address these longstanding problems, Puerto Rico will require a federal control board, debt adjustment, constitutional reform, and privatization of state enterprises.

²⁰ Marc D. Joffe and Jesse Martinez, “**Origins of the Puerto Rico Fiscal Crisis**” **MERCATUS RESEARCH** at the Mercatus Center at George Mason University Released: April 2016 <https://www.mercatus.org/system/files/Joffe-Puerto-Rico-Fiscal-Crisis-v1.pdf>

On addressing searching into the Spanish monarchical era, these authors point out the following, which again supports, unknowingly the thesis of the exception when it speaks of “the public sector being unable to address the unintended consequences of congressional action.”

Puerto Rico’s history has bequeathed the island political institutions that are unable to balance revenues and expenditures, along with an economy that is dominated by the public sector and unable to address the unintended consequences of congressional action.

The industrial economy substitutes the plantation, and increase in abuse of public finance

But the Popular Democratic Party did a 180 degree turn around after WWII in its development strategy. It had been based on agriculture and it changed into manufacturing, practically overnight. On the American sugar corporations abandoning Puerto Rico, a second group of users of cheap labor exploiters became dominant: the manufacturing corporations of Operation Bootstrap. Industrial manufacturers came to Puerto Rico for good reason: little or no local taxes, incentives for training, abundant and inexpensive labor, ready-made industrial buildings at subsidized prices, and federal tax abatement; they were allowed to retain their earnings in Puerto Rico without paying federal taxes (they had been forgiven local taxes).

The law allowing this arrangement was based on an early decision by the Supreme Court setting up the exception: Puerto Rico was foreign in a domestic sense. The specific federal statute that applied was designed for the Philippine Islands in 1919-1920, so that export companies could send their produce to the U.S. market and not pay federal taxes in the territory- yet another law part of the exception as well as placing the Spanish Islands under the federal foreign income tax provisos, not the internal ones applied to the state.

The federal minimum wage applied to Puerto Rico in manufacturing. Because labor was abundant, minimum wage, in effect, became the maximum paid to most Puerto Ricans.

In the 1950s, again though special dispensation – another exception within the deception of economic development – , Puerto Rico-based companies were allowed to refined heavy sulfur oil from Venezuela. It was reasoned that the winds from the northeast would take pollution away from island population centers, so they were placed in the south and the southeast of the Island. Several companies were set up and thrived until the market killed them in 1973 when OPEC raised the price of oil sky-high.

By 1975, the principal political movement since 1940 – the Popular Democratic Party (PPD) - had allied with the manufacturing concerns making immense profits- pharmaceutical, electronics, and electric. Because the benefits to these corporations would not be available under statehood since they were tied to the exception, the PPD and manufacturers became closely intertwined; neither supported statehood, again, for good reason.

The federal law giving island-based manufacturers tax-abatement was revised by Congress to give greater tax benefits to state-side American corporations in 1976; these included : repatriation of benefits without waiting for liquidation of the company and re-investing profits in banks and other financial institutions, even allowing some of them to set-up their own non-commercial banks. All of this was possible because of **the exception**: the special laws governing Puerto Rico.

Puerto Rico was awash with retained earnings; banks lent money for housing as if it grew on trees; which, of course, ended eventually in a burst bubble; it did not develop in terms of sustainable growth, but was able to enjoy growth of the banking, construction and financial sector. It was difficult to say no to such a bonanza. Nevertheless, government income did not keep pace with circulation of money in this limited economic sector.

Two other laws were significant during the heyday of the exception: exemption from the prohibition that financial institutions sell to their own clients in grouped funds such as mutual the bonds that they placed in the mark. The other was a 1919-1920 law that allowed triple tax exemptions to the bonds of Puerto Rico. These set the tone for yet another stage to be described later on.

This era was a variation of the state of exception; it was no longer just a state of exploitation, but much more varied in the multiple holds on the population. Puerto Rico entered fully into a state of deception. Deception in the sense that the effects of local and federal action were not placed in the context of an immense development of the world economy, of opening of U.S. markets for some expensive manufactures through trade agreements (the same agreements that led the previous light manufacturing concerns into bankruptcy because they could not compete with Ireland and Israel). Just as the garment industry had ceased to be competitive; Puerto Rico that had been the capital of bra making, manufacturing one half of the bra's in the world, became the capital of pill making, manufacturing one of nine pills.

During the heyday of Operation Bootstrap, the U.S. used Puerto Rico as a model for democratic government. Patrick Neveling in Academia.com has suggests that the use of Puerto Rico in US foreign policy was a principal use, and local economist José Joaquín Villamil in the 2006 Brookings study of Puerto Rico²¹ that the principal export was not pills but the colonial model devised by Congress and the Executive. The exception was useful in foreign policy during the Cold War.

I call it the state of deception because it was built on shaky grounds. But I could also the state of substitution of local initiative for federal transfers and external initiative. First of all, as the Great Society of Lyndon Johnson became the norm of Democrats and Republicans, federal transfers to Puerto Rico grew exponentially. I was appointed to the U.S. Department of Health, Education and Welfare in the early 1970s to provide input on areas in which Puerto Rico was not receiving equal treatment (read federal transfers).

Nowadays, while Islanders like to complaint about discriminatory treatment, transfers per capita are higher than in six states.²² Federal transfers, with the ensuing creation of government jobs substituted job creation by 936 corporations and other variations of private enterprise. But more importantly, the benefits were built on shaky grounds as Puerto Rico learned when 936 was eliminated during the decade of 1996 and the island went into a deep recession in 2006 from which it has not recovered. Deception was the one characteristic of this phase of exception.

²¹Susan M. Collins, Barry P. Bosworth and Miguel Soto-Class, editors. **The Economy of Puerto Rico – Restoring Growth**. Brookings Institution, 2006.

²²

The bounties of 1936 allowed the U.S. and those supporting Commonwealth to praise its benefits. Although temporary, they served the purposes of interests controlling Congress. As such, any development effort with this type of benefit is a disaster in waiting. To a degree, Commonwealth was a controlled environment, a cocoon built by the U.S. and protected by corporate America and its needs. The cocoon was the cave for us semi-primitive beings. The Brookings Institution broke the back of the rationale for tax abatement and subsidies in its 2006 study of the economy of Puerto Rico. Others had criticized them but no institution with the prestige of Brookings with its liberal left slant, had sailed into them.

So the dependency that my father spurred with the Puerto Rico Reconstruction Administration in 1936 (the Chardon Plan), I continued to enhance as I supported extension of food stamps, increased education and health funds, and labor training programs. Not surprisingly, the support for statehood increased substantially. From 1976 on, the New Progressive Party grew into a major party rivalling the Popular Democratic Party in strength, control of the local Executive, the, Legislature and the mayoralties.

A facile argument for statehood

A 2014 GAO²³ is quoted at length not because it supports statehood, but because it highlights the effects of the exception.

“What GAO Found

“Of the 29 federal programs GAO reviewed (which accounted for about 86 percent of federal program spending for states or their residents in fiscal year 2010), statehood would likely affect 11 programs. For 3 other programs, while the programs themselves would likely not change under statehood, eligibility determinations for these programs could be affected indirectly by changes that could occur to benefits in other programs. Statehood would not likely affect the 15 remaining programs.

“The extent to which federal spending would change for some of the programs affected by Puerto Rico statehood depends on various assumptions: these assumptions include the program eligibility options Puerto Rico might select or the rates at which eligible residents might participate in the programs. For example, for the four largest programs for which federal spending likely would change under statehood—Medicare, Medicaid, the Supplemental Nutrition Assistance Program (SNAP), and Supplemental Security Income (SSI)—GAO used various assumptions to estimate the range of potential effects on federal program spending. The estimated ranges for the four programs, as described below, are based on Puerto Rico being treated the same as the states in either 2010 or 2011, based on the year for which GAO had the most recent data.

“**Medicare:** In fiscal year 2010, actual federal Medicare spending in Puerto Rico was \$4.5 billion; if Puerto Rico had been a state in calendar year 2010, estimated federal spending would have ranged from \$4.5 billion to \$6.0 billion. The Medicare estimates take into account certain changes under the Patient Protection and Affordable Care Act occurring after 2010 that would reduce spending. Also, the Medicare estimates depend on the estimates for Medicaid, as some individuals are eligible for both programs.

“**Medicaid:** In fiscal year 2011, actual federal Medicaid spending in Puerto Rico was \$685 million; if Puerto Rico had been a state in calendar year 2011, estimated federal spending would have ranged from \$1.1 billion to \$2.1 billion. The Medicaid estimates do not take into account the cost of nursing home and home health services in Puerto Rico due to the lack of available cost data, and because Puerto Rico lacks an infrastructure of nursing home facilities, according to Centers for Medicare & Medicaid Services officials. If these services became available, Medicaid spending would likely increase.

²³ Study, PUERTO RICO: Information on How Statehood Would Potentially Affect Selected Federal Programs and Revenue Sources. **GAO-14-31: Published: Mar 4, 2014. Publicly Released: Mar 31, 2014.**
<http://www.gao.gov/products/GAO-14-31>




“**SNAP:** In fiscal year 2011, actual federal spending for a similar program in Puerto Rico was \$1.9 billion; if Puerto Rico had been a state in calendar year 2011, residents would have been eligible for SNAP, and estimated federal spending would have ranged from \$1.7 billion to \$2.6 billion. One reason why the low end of the estimate range is less than actual spending is because participants' benefits would be reduced because of benefits received from SSI, for which Puerto Rico residents would newly qualify.

“**SSI:** In fiscal year 2011, actual federal spending for a similar program in Puerto Rico was \$24 million; if Puerto Rico had been a state in calendar year 2011, residents would have been eligible for SSI, and estimated federal spending would have ranged from \$1.5 billion to \$1.8 billion.

“All the federal revenue sources GAO reviewed—individual and corporate income taxes, employment tax, excise tax, estate and gift taxes, and customs duties—could be affected if Puerto Rico became a state. For example, under statehood, Puerto Rico residents would be subject to federal tax on all their income: currently, they are subject to federal tax only on income from sources outside of Puerto Rico. Also, some sources of income, such as pension income, are taxed differently in Puerto Rico than in the states. As a result, for 2010, Puerto Rico filers' adjusted gross income for federal tax purposes would have been higher than that for Puerto Rico tax purposes. For some revenue sources, the extent to which federal revenue would change depends on various assumptions. For example, for the two largest revenue sources that would be affected substantially by statehood—individual and corporate income taxes—GAO used various assumptions to estimate a range of federal revenue. The estimate ranges, as described below, are based on Puerto Rico being treated the same as the states in either 2009 or 2010, based on the year for which GAO had the most recent data.

“**Individual income tax:** In 2010, Puerto Rico taxpayers reported paying \$20 million to the United States, its possessions, or foreign countries. According to officials from Puerto Rico's Department of Internal Revenue, most of these payments would have been to the United States. If Puerto Rico had been a state in 2010, estimated individual income tax revenue from Puerto Rico taxpayers would have ranged from \$2.2 billion to \$2.3 billion (after accounting for estimated payments in excess of tax liability from refundable tax credits, such as the earned income tax credit).

“**Corporate income tax:** In 2009, U.S. corporations paid about an estimated \$4.3 billion in tax on income from their affiliates in Puerto Rico. Most of this amount was from an unusually large amount of dividends repatriated from Puerto Rico (compared to amounts repatriated in earlier years or in 2010). Absent that spike in dividends, the federal taxes these corporations would have paid for 2009 would have been about \$1.4 billion. If Puerto Rico had been a state in 2009, estimated corporate income tax revenue from businesses that filed a Puerto Rico tax return for that year (or their parent corporations in the United States) would have ranged from \$5.0 to \$9.3 billion. The low end of this range assumes that U.S. corporations would have used prior-year losses of affiliated Puerto Rico corporations to offset their federal taxable income to the maximum extent (leaving only smaller or newly generated losses available to offset income in subsequent years), among other assumptions. However, this range does not take into account any behavioral changes of businesses with activities in Puerto Rico. For example, according to tax policy experts at the Department of the Treasury and the Joint Committee on Taxation, changes in federal income tax requirements under statehood would likely motivate some corporations with substantial amounts of income derived from intangible (and therefore mobile) assets to relocate from Puerto Rico to lower tax foreign locations. The extent to which such corporations might relocate from Puerto Rico is unknown. Consequently, GAO produced an alternative set of revenue estimates to account for some businesses with activities in Puerto Rico potentially relocating under statehood: this range was -\$0.1 billion to \$3.4 billion. The low end of this range is negative because U.S. corporations would have used their Puerto Rico affiliates' prior-year losses to reduce their taxes to such an extent that they would have more than offset the positive tax amounts that other corporations continuing to operate in Puerto Rico under statehood would have paid.

Determination of Whether Puerto Rico Statehood Would Affect Selected Federal Programs			
 <p>Likely to change</p>	<ul style="list-style-type: none"> • Medicare • Medicaid • Supplemental Nutrition Assistance Program • Supplemental Security Income 	<ul style="list-style-type: none"> • Federal-Aid Highways • Pell Grants • Temporary Assistance for Needy Families 	<ul style="list-style-type: none"> • Title I Grants to Local Educational Agencies • Children's Health Insurance Program • Post-911 GI Bill • Federal Direct Student Loan Program
 <p>Eligibility determination may be affected</p>	<ul style="list-style-type: none"> • Section 8 Housing Assistance Payments Program (Tenant-based) 	<ul style="list-style-type: none"> • Section 8 Housing Assistance Payments Program (Project-based) 	<ul style="list-style-type: none"> • Special Supplemental Nutrition Program for Women, Infants, and Children
 <p>Not likely to change</p>	<ul style="list-style-type: none"> • Social Security – Old Age and Survivor Benefits • Social Security – Disability Insurance • Unemployment Insurance • Veterans Disability Compensation • Deposit Insurance 	<ul style="list-style-type: none"> • National Institutes of Health Extramural Research • Special Education Grants to States • Social Insurance for Railroad Workers • Mutual Mortgage Insurance Program • National School Lunch Program 	<ul style="list-style-type: none"> • Head Start Program • Public Housing Operating Fund • Disaster Relief Public Assistance Grants for Presidentially Declared Disasters • Public Housing Capital Fund • Central Liquidity Facility

Source: GAO analysis of laws and regulations, and discussions with listed program agency officials.

Delusion as a means of coping with an overwhelming reality.

This section on possible additional funding is important since it has been used in the past to justify the call for statehood. Some Puerto Ricans desperately seek another type of protectionism to pull them out of the hole in which they had been so comfortably ensconced. That is, break away from the delusion of Commonwealth to dive deep into the delusion²⁴ that statehood will solve all problems. The financial and economic problems of Puerto Rico are the result of past adaptations to the U.S., which admittedly would no longer be necessary under statehood or independence. Islanders must be able to confront reality, their dependence on federal transfers, the shenanigans to get what they can from whitey, and assume full responsibility of their future once on a level plane with other states or nations.

I translate delirio as delusion which is much more common in English than delirium, which generally used in tandem with tremens. To Castilla del Pino, delusion is a fantasy that, given pathological conditions, is perceived as the reality in which the individual is immersed (page 219). The delusional cannot be convinced of the error, cannot be “cured” (page 136). Castilla del Pino quotes another author on the subject who speaks of an existing pseudo community around the delusional, for the delusional needs others for the construction of delusion since these others are will constitute the specific world and reality of the individual (page 150).

The social strategies of inducing migration and the economic strategy of increasing total dependence on federal transfers is the institutionalization of psychosis. Delusion, which Castilla del Pino calls *delirio* in Spanish, allows for “the complete apprehension (*intelección*) of the world, and thus ensures the subject’s adaptation to reality” (page 218)- a reality which he could not otherwise cope. This is why delusion is a necessary error for it allows the individual to deal with

²⁴ Carlos Castilla del Pino, *El Delirio, un error necesario*. Oviedo (Spain): Ediciones Nobel, 1998.

an overwhelming reality. It is a way of life (page 223) and allows for the equilibrium between the individual and the symbolic objects around him (page 214).

Answering the need to adapt to the exception, Islanders have devised two laws to allow wealthy American to settle in Puerto Rico for six months a year, and protect them from U.S. income tax. Islanders also devised another mechanism, interpreting the U.S. tax code as tax abatement: taxes paid in Puerto Rico count against taxes that would be paid in the states. There has been no rejection of this position so far, so it is being used as a revenue enhancement to Puerto Rican government.

Therefore, some Islanders are not totally lacking in inventiveness even though the initiative of the majority of population might be quieted by subsidies, but they have also learned how the world works: using the exception as catering to the powerful in Congress. Don't fight city hall is the call of the wise!

Why is this necessary? Because there is a different rule of law governing Puerto Rico. This is the exception. In our case the exception is accompanied by a collective Stockholm syndrome: ninety percent are said to be supportive of some continued relationship with the U.S. as well as U.S. citizenship.

Last year, after a ten year recession, Congress intervened directly through the financial stabilization board, on behalf of those that had bought triple tax exempt bonds, guaranteed by the Constitution, because the island government could not even pay back accrued interest. I am sure these areas will be covered by Mr. Rojo, Mr. Tigger and Governor Fortuño more wisely than I.

The uses of the exception

We would not have survived as human beings if we had not learned to fear going out of the cave, individually hunting for animals very early in our human development. Fear seems to have been partially overcome by sheer numbers. Perhaps herein lays the origin of the tendency to organize, in order to meet the unknown, but also the known.

The danger is clear, present, at any time and at every time because it is part of the nature of man; it ranges from the abuse of a bureaucrat misplacing your information to the request that you give up part of your income through taxes, that you be provided with services you do not want but must pay for and, of course, that you lay your life on the altar of power- war. Most human beings have accepted the limitations imposed by government in exchange for protection from fear, from what I would like to call the primal feeling.

Difference among groups and among human beings results in fear because the ways and ideas of the different are not known. Thus, the different become a threat. Also, those in government are as much a threat as a protection- a protection to those like them, and a threat to those unlike them. I return you to one of the quotes from Becker on the drivenness of man:

to make his mark on the world, to try to twist it and turn it into his own designs, to bury over the rumbling anxieties; and this usually means that he tries to twist and turn others, make his mark on them, use them to justify his problematic life.

I shall give you a few examples of the use of exception which we tend to exalt as founding actions of our nation. Some know about some in another context, others are new to most Americans and foreigners.

1. The power grab by Justice Marshall in *Marbury v Madison* claiming that the Supreme Court was the final arbiter of the law (not Congress which passed them) was such a corruption, a corruption of the republic which allowed nine unelected individuals to be the final arbiter in issues decided by the elected. Marshall went beyond the Constitution and because he was not challenged by Congress or the President, he prevailed, effectively changing the Constitution without an amendment. This is defined as an exception. The exception proceeds from the sovereign and Marshall claimed ownership of the Constitution unchallenged.
1. But more than a decade before this decision, the states, then under the Articles of Confederation, enacted the Northwest Ordinances (1787) that extended their power to rule other lands as property, and established a mechanism to rule those living there; some Native American Nations rebelled, resulting in their near extermination. The exception in the Articles proceeds from sheer power, enough power to remain unchallenged. At any rate, those living outside the thirteen states under the new Constitution, did not participate in the process of approval of said power of the states and federal government. They were not regarded as having rights except those that the power of the new nations would confer on them as a result of being brought into the nation. The Ordinance would find support in Article Four of the new Constitution being drafted at the time. While the new Constitution allowed for new territories to be brought in as states it did not authorize the power grab by the federal government or the states. Once the power was defined by applying the property clause of the Constitution, territorial expansion proceeded very fast. Almost immediately Kentucky, on territory claimed by North Carolina, was admitted and Vermont was allowed to breakaway from New Hampshire as a result of a vote to that effect.
2. When Thomas Jefferson was faced with buying Louisiana from France he doubted the nation had the constitutional power to do. He is said to have remarked that the less that was said about it, the better. He went ahead and, on buying Louisiana he transformed the Nation significantly beyond the decision that brought about the Northwest Ordinances. Yet another exception. The exception proceeds from a political need that overwhelms all other norms and ways of government.
3. Under the Andrew Johnson administration, Congress consisted of only Union members. The secession being over, the elected southern senators had every right according to the Constitution (but not the politics of the times) to return to their seats in Congress. Congress rose above the Constitution and imposed an additional criterion: the Southern states had to pass a specific amendment on the rights of former slaves before the Senators from any particular state on the losing side of the way were reinstated. This was an exception born in politics.
4. Not as positive were the decisions of the Supreme Court allowing the gradual deterioration of the rights of former slaves from the time of the aforementioned amendments until *Plessy v Ferguson* in 1896 where African Americans were not allowed to travel in the same railroad cars as whites, The African Americans were noticeably different and there were very many of them, instituting a serious challenge to the polity. One can argue that the Reconstruction amendments of the late 1860s and early 1870s, on changing the legal status of African Americans, brought about the challenge to the social political ways of the nation. Answering this challenge the Supreme Court instituted separate and equal as the law of the land. This was an exception to the Constitution's Reconstruction Amendments. The law was undone in 1954 by the creator of the law, the Supreme Court, with *Brown v Board* on school desegregation.
5. Shortly after, 1900, the national social and political system was challenged by another racial, religious, and ethnic group. The nation brought in approximately ten million Spanish subjects under the American Flag as a result of the Spanish American War. Again the challenge was the result of an action by the federal government: incorporating some ten million Malays, Africans and Europeans into the national polity, under the flag. Answering this challenge the Supreme Court instituted separate and unequal as the law of the land directed to these persons so different even from the African Americans already in the nation. The change was done through several Supreme Court decisions known as the Insular Cases, with the composition of the Court being the same as under *Plessy* and the arguments for separation being ethnicity (different ways), religion and race. This was another exception. There has been no *Brown v. Board* to overturn them.

Under Bush II's administration there was an effort at an exception in the case of a terrorist, Boumediene. Bush pretended to take this person through military courts. Bruce Ackerman had this to say about the effort,¹

6. It is one thing for President Roosevelt to designate a captured American citizen serving in the German army as an “enemy combatant” and try him without standard scrutiny by the civilian courts; it is quite another for President Bush to do the same thing for suspected members of al Qaeda. The difference is obvious and fundamental: Only a very small percentage of the human race is composed of recognized members of the German military, but anybody can be suspected of complicity with al Qaeda. This means that all of us are, in principle, subject to executive detention once we treat the “war on terrorism” as if it were the legal equivalent of the war against Germany.

In any of the land-grabbing cases, were the inhabitants consulted? No, they were traded along with the land, with the property acquired. People came along with the property now in the hands of the federal government.

Was this democratic? Well... it was necessary. For a treatment of the exception in America from a European point of view, see Jason Ralph, *America's War on Terror: The State of the 9/11 Exception from Bush to Obama*. Oxford Scholarship Online: May 2013DOI:10.1093/acprof:oso/9780199652358.001.0001. 2013.

For those that would call destructive the state of exception, let me just point out that the statement should be followed by the question, damaging to whom? The exceptions mentioned are the very basis of our glorious nation. They are part of our uniqueness, our exceptionalism if you wish.

On the nature of American democracy

Representative democracy is based on government by those represented, the enfranchised. But since 1787 the U.S. has had various types of territories, some peopled by American citizens that have no say on the ultimate power that will govern them. These do not have a right to change the relationship with the government of the nation unless they declare independence, which is a form of secession by American citizens. Why? The original reason was that they were not white Anglo-Saxons. It is now much more complicated.

Madison defined the well-being of the nation as the sum of all vested interests within the governmental and around governmental structures. Vested interests use the legislators and other elected individuals as well as non-elected members of government to support their position. In such a system, those territories and American citizens that do not have elected representatives with the same power and of the same nature as others, are left out of the pot bouille that Madison defined as the national well-being. This is the case of Puerto Rico and other territories.

It took me more than fifty years in and out of government, most of them in Puerto Rico and practically all of them under the aegis of the U.S. Constitution, to learn that individuals should run for cover when exposed to the power of well-meaning individuals, and defend myself from the efforts of government to improve my nature by directing and redirecting my ways. The tendency for people in government is to project their needs into national projects: civilize the uncivilized, end poverty through subsidizing it, health care reform, public schools, social security and Medicare, etc.

Stated succinctly: Congress, the President and the Supreme Court govern American citizens in American territories where no one has a right to be represented fully in the governing bodies of the nation.

The nation changed, but not for Islanders.

The modality of government.

Democracy demands that we all be treated equally: and we are... but only because we are ruled by law, not one but many rules devised for different people. Is this the rule of law?

We enjoy most of the rights of the Bill of Rights; those denied were based on our difference and acknowledgment of a lack of community support. Truth be told we accepted it and even rejoiced under Commonwealth to be differently treated. The rationale and our acquiescence led to a more permanent formula for autonomy within the nation in exchange for yielding political rights and the most fundamental of all rights in a democracy- the right to elect those that have the final power over us: Congress and the President, and given the highly political process for membership, the Supreme Court.

We also know all democracies are works in progress. You might agree that American democracy before the **Brown v Board** decision on segregation and before the **Civil Rights Acts** was substantively different from that which followed in term of political and human rights. There are exceptions within democratic republics as well as within democratic monarchies, yet they do not cease to be democracies if the exceptions are temporary, means of adapting to new conditions. This is not the case of the US. The exceptions have become permanent, a way of life for those that yielded their initiative and a way of life for those that would use the territories, peoples, and their laws as rentism. This is a choice of a not insignificant number of Islanders who would rather yield than fight.

This is human nature. For more than fifty years, we truly believed that Commonwealth was the nearest thing to a gift from God, the American state, through the intercession of remarkably well-meaning individuals. Those opposing Commonwealth suggested there were other creations given by god: statehood or independence in no less heretic terms. We changed the totalism, I do not want to call it totalitarianism, of the Spanish monarchy not because of lack of will but lack of capacity to instrument the pettiness of its rulers, for the totalitarianism embodied in Americanization or substitution of our ways for superior ways.

I do not find it useful to speak of government as evil because it is the instrumentalization of the modern state. In the symbiotic relationship between these institutions, government and state, The former has propelled into the place of God Almighty and defined itself as the Bible or the Koran. Public education curriculum is its catechism. Twice have I been Secretary of Education and both times, with more than thirty years in between, the elements of indoctrination through social studies, through Spanish, through English and even science have been directed towards supporting the state, government, and their god-children: political parties.

In Puerto Rico schooling has been directed, since 1898, at propping up the current power structure and the relationship of helplessness with regards to Congress, the President and the U.S. Supreme Court. It was also the principal mechanism of Americanization in support of all imported institutions and social, political and governmental directives. Unlike the rest of the nation, all education power arises from the state, not through votes of school districts. And we accepted much of it asunder the moniker of modernization and of unique experimentation in doing away with

colonization. This was a remarkable effort at direct change, with all its moral and ethical implications, and new considerations since Americanization was not geared at political equality but at permanent subjection since our original sin of difference could not be wiped away or accepted by the American imagined community. It is possible that the Nation has changed more than Puerto Rico and the possibility of acceptance as equals is in the horizon.

What you see I what you get, was a song by Tina Turner. What we get under the separate rule of law is not Tina Turner singing, but ample subsidies for more than one half of the population and the right to escape to the states when the going gets tough. This is better than ninety five percent of the rest of the world. 400,000 in ten years.

The exception as applied in Puerto Rico

I already mentioned a very substantive change in American democracy as a result of the *Insular Cases*-, the U.S. instituted a rule of law that formally established a differential treatment under the U.S. flag; in 1917, this differential treatment was extended to all American citizens, born in Puerto Rico or any state but living in Puerto Rico.

The legal argument is that it is not racism when differential legal treatment is applied on the basis of residence. What gave Congress and the Supreme Court the authority to separate the different in what we recognize as ghettos in Warsaw, Spain and other parts of Europe? The Supreme Court. The islands became property, not an important part of the capitalism.

Not only did Puerto Rico and other Spanish territories that came under the U.S. flag as a result of the war of 1898, received the treatment the guano islands, the early decisions of the Supreme Court know as the *Insular Cases* were made by the same Supreme Court and the same membership that instituted the initial decision that allowed for segregation in railroads- **Plessy v Ferguson**. The racism in *Plessy* was the same as that in the **Insular Cases**, with the same Supreme Court members.

Justice White, who wrote some of the decisions and later presided over the Court in still other **Insular Cases**) was a member of the Knights of the Camellia, the Ku Klux Klan equivalent within southern plantocracy). Was it not Felix Frankfurter, the Associate Justice of the Court who, on being asked what was the law, he raised his hand and showed five fingers, the five votes need for a decision of the Supreme Court.

To be charitable with the Knight of the Camellia, perhaps he was playing Dante and writing his own divine Comedy. Dante had a special place for good human beings that were unbaptized. It was called limbo. The exception provided a limbo for the unbaptized Americans (race, ethnicity, religion) and generally Puerto Ricans have accepted it in stride. Why? It is the only choice available as long as Puerto Rico's does not well-being is not the same as that of the nation and Madison's mechanism works to bring us all together. We don't have a choice. Or perhaps, as Becker suggested, fear keeps us from exploring the surroundings of our own cave. We are not allowed to sit at the table. Perhaps some of you are. Residence became a convenient exception to the rule, even if it is under the American flag. It conveniently separated a grouping of the different, not unlike *Plessy* wherein the different could not travel together with whites. The Spanish territories were not deemed incorporated into the nation but were **of** the nation, property, (shades

of the Northwest Ordinance and of the Louisiana Purchase). They were deemed **unincorporated**. The creation of the concept of unincorporation was not new.

I will concede that the exception was a product of the nineteenth century and of the exceptionalism of American leaders blindsided by their own greatness. This was the country where the South upturned the result of the civil War through negotiations in Congress and the executive, and the approval of the members of the Supreme Court.

O tempora, o mores.

The time is gone, the ways of racism are gone, but unincorporation- institutionalized inequality of Americans under the flag persists. The Supreme Court has wiggled itself out of declaring the relationship of Puerto Rico extraconstitutional.

The survival of the exceptions results from their convenience to vested interests, some of which are still racist, but not all arguments are based on racism. The relationship that racism built is still convenient to many in the nation, not the least the political parties. Democrats fear a Democratic state as much as Republicans fear it. It's bad enough that Tom Pérez, a Dominican American is the president of the Democratic Party. If Puerto Ricans move in, some will be displaced. Fear; Remember that fear in Becker is the source of all evil. Substitute Pérez and substitute a Republican Party and the argument is the same, with a good dosage of racism in both cases.

Today's U.S. Supreme Court, liberal or conservative, still refuses to undo the special rules of Congress it sanctioned by instituting a regime of separate and unequal. Americans in Puerto Rico, unlike the African-Americans and descendants of slaves in the nation, are still ruled by a regime born in racism.

Now, is this what is called the rule of law? Remember Madison, we are not angels. The rule of law is man-made but we like to think it proceeds from a higher authority- the sovereign- in this case the people.

Islanders have learned that the rule of law sets them aside, does not include them in the definition of national well-being and that it can be directed at generating benefits for some (those that define the rule of law) and denying them to others (those that do not participate in their definition). This is only natural since islanders do not get to write the law except when the law-givers allow them to do so and only within specified limits.

Conclusion

As we set course towards the end of my speech, let me remind you:

1. democracy is dangerous for the disenfranchised. But it is still the best of all other forms of government.
2. The rule of law is essential for democracy but it can be used to put down all human initiative.

At times, democracy seems useless to some, but its usefulness to many is undeniable: useful to whom, when and where, since it wields, at times, absolute at times, power. As long as it is useful

to a majority or to interests powerful enough to impose their will in Congress, that which we call our democracy, will prevail.

Yes, it is the best of all the alternatives of governance, including traditional theocracies. Madison also insisted that the coming together of all competing interests within government –executive, legislative, and courts- will yield the national well-being.

The U.S. was already imbued in the nationalism of the republican republic and was transforming said republic into an empire, under a state no less nationalist than Cuba, now, or Venezuela, or Bolivia, or Nicaragua. We were not alone. The national state in time became the Communist state, as avowedly anti-nationalist as we taught school children America was anti nationalist, with fellows traveling to Cuba, then to Nicaragua, and now Venezuela. Christians did it before and Muslims do it now, the Japanese raped Nanking in 1937 with basically the same rationale that we used to put down Aguinaldo in the Philippines from 1900 to 1904.

I will conclude with some words of hedge fund manager Anthony Scaramucci, turned presidential aide and returned to making money within ten days. Scaramucci looked into the condition of Puerto Rico over a year ago, and advocated the organization of the Financial Stability and Management Review Board that now reigns supreme. On supporting the Board, yet another exception, he advocated fixing the problem with exactly what caused it: federal government stewardship. The 2016 article, that I quote profusely, was called **The Shame of leaving Puerto Rico in Limbo** (SkyBridge Capital's "Wall Street Weekly").

Puerto Rico's governors were forewarned about this impending economic crisis. Forty one years ago, Nobel Economic Prize winner Dr. James Tobin warned that Puerto Rico was in a precarious economic situation. On December 11, 1973 the Government Bank released a report by Gerald Tobin on the economy of Puerto Rico, locally known as The Tobin Report, a comprehensive study on Puerto Rico's economic development, fiscal and budget policies, saying "The trends of government spending, the deficits of the government agencies, public debt and the production cost cannot be sustained even if the external economic conditions are favorable." It strongly recommended "a serious austerity program and a long list of substantive measures cutting governmental operations and costs". Should this not be followed, "the government of Puerto Rico will face the hard realities of running for desperate solutions."

Thus, all of the leaders of Puerto Rico, mostly members of a Confederacy of Dunces that governed the island, had been advised of impending doom unless the course of the ship of state was corrected. The reference is to a novel by John Kennedy O'Toole, about a mama's boy (which I would say represents the government of Puerto Rico), somewhat deprived of good sense since mama (the U.S. government) made decisions for him throughout his life) but who falls in love with stripper- the financiers, banks and hedge funds-, and eventually runs off with them to New York. In the novel there are all kinds of criminal, proto-criminal activities, happenings and miss-happenings, and hidden quid-pro-quos ranging from entertaining to disgusting, some crazy and others crazier, but no one ends up in jail and no one is committed to an asylum. The story is of course is that of economic advice to Puerto Rico during the past seventy years as the current disaster was being conceived and began developing.

Among the most reputable recent ones is Anne Krueger of the IMF (Puerto Rico – a Way Forward, June 2015), and the Heritage Foundation writings on Puerto Rico. They took a formula and applied it, Puerto Rico and Puerto Ricans be damned!

Why Scaramucci? He was easier to read than Krueger, less ideological than Heritage. In the first paragraph Scaramucci describes Puerto Rico's financial mess as a crisis in the making for many years crisis". He begins saying that

Puerto Rico's downward spiral conceivably began in 2006 when U.S. government phased out tax credits for manufacturing investment, pushing the island's economy into recession.

We have already noted that 936 was possible only because it was an exception, a treatment of American citizens in Puerto Rico as different or special in the sense of not being able to develop fully without this gimmick. For example, the Kreps Report on the Economy of Puerto Rico submitted to President Carter by Juanita Kreps, Secretary of Commerce in 1978, (Page 12, second volume) advises that the 936 corporate tax abatement is essential to Puerto Rico. In 1976, the same government eliminated it.

Immediately afterward he says,

But the crisis has really been brewing for decades because of triple-tax exempt status of Puerto Rican bonds (meaning bondholders do not have to pay local, state or federal taxes on income derived from these bonds. The only other triple tax-exemption occurs if an investor buys bonds in the state in which he or she lives."

Again, this is a condition that applies only to a state of exception as he points out, in the rest of the states triple tax exemption of state bonds is possibly only if the state itself exempts its residents from state and local taxes. In Puerto Rico, it has been a special proviso in federal law since the 1920s.

He adds,

The triple-tax exemption made Puerto Rican bonds attractive to American mutual funds, causing institutions to gorge themselves on the island's debt. In turn, the massive amounts of capital raised by the Puerto Rican government was squandered in ways it didn't bring economic growth necessary to sustain a massive debt load.

What else made them desirable? General Obligation bonds are guaranteed by the Constitution of Puerto Rico, not only by the contract with the buyer, and before all other payments are met, payments of bonds and interest must be met. This is part of the Constitution that was written in Puerto Rico from in 1952 and approved by Congress in 1953. In all there are 17 different agencies sourcing bonds.

As the government has been forced to use greater percentage of its budget, to service debts, the quality of life for Puerto Ricans has deteriorated." He could have added, that deterioration put the bonds in jeopardy and, in turn the mutual funds as well as the entire cooperative movement in Puerto Rico that was forced to buy these bonds in order to be allowed to operate.

He continues,

For almost two years rating agencies and Puerto Rico's governor have been warning this day would come when Puerto Rico would be unable to pay its debts and urging Congress to come up with a restructuring plan. At the same time, Puerto Rico's misfortunes caused its bonds to trade at a discount to par, attracting hedge funds specializing in distressed debt. These hedge funds counted on the extensive legal protections afforded the Puerto Rican bond-holders, especially for those owning first-priority General Obligation (GO) debt.

Is there another exception hidden here? Yes. It has to do with municipal government organizations (cities and counties) and public corporations which are allowed throughout the nation to file for bankruptcy protection. Puerto Rico and the other **un**incorporated territories were written out of the 1984 Bankruptcy Act. Apparently, smart bondholders had already surmised the way Puerto Rico, Virgin Islands and Guam were going, so they made sure Islanders could not escape from what speculators felt was an inevitable downward spiral in its finances and economy.

Scarmucci continues,

It's not a sovereign country, so that it has fewer tools for escaping economic hell than a sovereign nation like Argentina. Sovereigns have the ability to hit reset button by devaluating their currencies, and this the real value of their debts, as well as appeal to global bodies like the International Monetary Fund (IMF). Puerto Rico has no such options. New Argentine President Mauricio Macri campaigned on promise to remove the peso's peg to the dollar days after taking office, and he followed through on that promise in December, causing the currency to immediately drop by 30%."

Yet according to the Supreme Court Puerto Rico is foreign but in a domestic sense, an exception to the rule of law of the rest of the nation.

Since we must describe Puerto Rico in terms that you can recognize, I continue with Scaramucci's appreciation of Puerto Rico's condition from the point of view of his Capital SkyBridge hedge fund,

Puerto Rico with a population of 3.5 million has a total \$72 billion in debt spread across 17 government entities. Only New York, with a robust economy and a population of around 20 million, and California, with nearly 40 million residents, are more indebted. Puerto Rico's debt-to-GNP ratio grew to 100% last year, high even for a large country with a central bank able to print currency. In the U.S. states, the average debt-to-personal income ratio is around 4%, the highest being Hawaii at 10%. In Puerto Rico it's greater than 90%.

This is a structural feature of the exception since it is a combination of special laws within a marketplace bound to the rule of law of the nation, applied to Puerto Rico only when it is in the interest of lobbyists in Congress. This is the nature of America, the American nation. Love it or leave it. We have been quite happy to live in this context and condition for more than one hundred years. The law of the land is the rule of law for the nation and another rule of law for the territories.

This is heavy indeed. But the Island pension system is in similar disarray.

The island's pension obligations are largely an afterthought as the government tries to keep the lights on, but they are in the most dire straits of all. Puerto Rican pension funds have less than 1% of the assets need to pay all promised benefits. They are short \$30 billion, on the hook for \$2 billion this year (which constituted 25% of general fund revenue) and poised to go completely broke in only five years.

I will conclude my comments with Scaramucci's on his characterization of Puerto Rico. ²⁵

Puerto Rico is like a migrant worker in Dubai; lured reluctantly into a suspect arrangement, passport taken away, drowned with debts and held hostage to repay with money it doesn't have.

This is an apt description of a state of exception.