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Bhana, Surendra.
The United States and the Development of the Puerto Rican Status Question, 1936-1968.

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There is no exact parallel to the Commonwealth status of Puerto Rico. It differs considerably from the status of countries within the British Commonwealth, because the basis of the association is the political independence of the member nations. Puerto Rico's status had more in common with the position of small British Caribbean island territories when the United Kingdom organized in the late 1950s the Federation of British West Indies on the principles of federation and mutual consent. There were also some common features in at least two of the categories of possessions established by the French government in 1946. These two groups were “associated states” (Vietnam, Laos, and Cambodia) and “associated territories” (French Togoland and Cameroons). They were partly integrated with the French central government by means of their limited participation in the French National Assembly, and partly independent of the central authority in France because of their relative freedom in local matters.¹

In endorsing a unique constitutional formula in the form of the Puerto Rican Commonwealth, the United States departed from its traditional territorial policy of permitting either full statehood or complete independence. The new constitutional pat-
tern might conceivably have been extended to at least two other unincorporated territories, namely, Guam and the Virgin Islands. However, two general factors have prevented this from happening: one, the arrangement was born largely out of the long-term development of the peculiar relationship between Puerto Rico and the United States; two, the Commonwealth status has from the very beginning faced problems of definition. Since these problems are related with the significance of the Commonwealth, it is necessary to examine their development in detail.

The difficulties centered around the interpretation of the nature of the relationship between the United States and Puerto Rico. Muñoz Marín and Fernós-Isern saw in the Commonwealth arrangement more than a mere extension of autonomy by Congress. Whether or not they regarded in 1952 the Commonwealth status as permanent or transitory, they considered the relationship as having been conceived in a compact, and therefore it was not subject to changes except by mutual consent. It was on the basis of this principle that Puerto Rican leaders attempted on several occasions in the next sixteen years to improve and clarify the relationship. These attempts failed in their objective, and revived the debate on political status.

Although the debate came up in all its details only in 1959, the matter of the relationship was discussed by insular and continental authorities when the United States presented in 1953 Puerto Rico's case before the United Nations to cease reporting on the island to the world body. The presentation will be discussed here in some detail because the argument used by the United States before the international organization was incorporated by Puerto Rico in 1959 in building a case for the existence of a compact.

The United States had since June of 1947 submitted reports to the United Nations concerning Puerto Rico. Article 73 (e) of the Charter of the United Nations called upon members responsible for administering territories whose people had not yet attained "full measure of self-government" to submit such reports. In the five years since 1947, Puerto Rico had attained almost complete autonomy in domestic matters. There was no common definition of the phrase "full measure of self-government," and, therefore, presumably each member nation was left to decide for itself whether a particular territory, within its constitutional and governmental frame of reference, had reached the status. DTIP's
legal counsel Silverman believed that Puerto Rico had been transformed from a "non-self-governing territory" to a "self-governing territory," and therefore it was no longer necessary for the United States to continue submitting reports on the island.

Resident Commissioner Fernós-Isern initially proposed to President Truman to discontinue reporting to the United Nations. Governor Muñoz Marín agreed with the idea, probably to prove by a deed to the Puerto Ricans and the rest of the world that the Commonwealth's inception had in effect ended the island's colonial status. It would be a gesture of great symbolic import and psychological advantage. In September, 1952, Muñoz Marín sent to Washington two of his aides to discuss with the departments of the Interior and of State the procedure to follow in notifying the United Nations of United States intention of ceasing to report on Puerto Rico.

The two aides came prepared with a draft letter that Muñoz Marín was to send to the president. The Department of the Interior suggested changes, the most important of which was the deletion of the statement that Puerto Rico had "ceased to be a territory of the United States." It felt that the statement was a conclusion of law "probably not correct," and might cause controversy. It was also unhappy about the statements in the draft that maintained that insular laws could not be repealed or modified by "external authority" and that Puerto Rico's status and the terms of association with the United States could not be altered without the island's full consent. The Interior department was not certain whether this was correct or not. It agreed to the retention of the statement, however, provided it was made clear that this was Muñoz Marín's opinion, and not a settled point in law.

The State department, too, recommended a change. It suggested that the references to "vestiges of colonialism" be dropped from the draft letter because it had "certain psychological disadvantages."

A day later, September 26, 1952, Davis informed Interior Secretary Chapman that the DTIP had agreed to discontinue notifying the United Nations, but that the details of how to do this had not yet been worked out. Apparently the trip by the two aides had not been entirely successful in clearing up differences in interpretation over what Puerto Rico's new status meant. To iron out the disagreements, Muñoz Marín invited Davis and Silverman to come to Puerto Rico. Davis said he was unable to
come, but agreed to send Silverman. It is not known whether Silverman made the trip or not.

The disagreement over whether Puerto Rico was still a territory or not had not been resolved by October 9, 1952. In a six-page memorandum prepared by Acting Secretary of the Interior Vernon D. Northrop to Secretary of State Dean Acheson, there were frequent references to Puerto Rico as a "territory." Muñoz Marín took strong exception to this. He said the Commonwealth could not be abolished by Congress alone because "the form, content, and continued existence of the Commonwealth, as well as its origin, depend not on the unilateral power of Congress, but upon the bilateral will of the people of Puerto Rico and the Government of the United States . . . ." Puerto Ricans would be, he continued, "profoundly disturbed if the terms 'territory,' 'dependency,' or 'possession' were applied to the Commonwealth because none of them appropriately connote[d] the spirit or the substance of our political situation." Secretary Chapman complied with the governor's request, for he dispatched an amended memorandum to Secretary Acheson—it presumably superseded the October 9, 1952, version—in which all references to Puerto Rico as a "territory" were dropped. Chapman said that it would be preferable to emphasize the uniqueness of the Commonwealth.

Muñoz Marín amended a draft letter intended for him to send to the president in accordance with the governor's interpretation of the Commonwealth status. The draft letter was prepared by Davis. Muñoz Marín objected to the phrase "our view" in the following sentence, "It is our view that laws cannot be repealed or modified by external authority." It detracted from the import of the point being made here because, he insisted, Congress could not repeal insular laws. Only the courts were in a position to say whether a Puerto Rican law was valid or invalid. The whole paragraph, as amended by Muñoz Marín, read as follows: "The legislative power of the Commonwealth under the compact and the Constitution essentially parallels that of the state governments. The laws enacted by the Government of Puerto Rico pursuant to the compact cannot be repealed or modified by external authority. Their effect and validity are subject to the adjudication of the courts. Our status and the terms of our association with the United States cannot be changed without our full consent." The changes were incorporated by Muñoz Marín in a letter to the president on January 17, 1953.
The governor’s letter to the president (see Appendix B for the complete text) was intended for transmittal to the United Nations. Consequently, it dwelt at length on the progress that Puerto Rico had made toward autonomy since 1898. It stressed, first, the United States’ willingness to grant the Puerto Ricans complete self-government. Muñoz Marín wished to convey the impression that United States rule was never harsh. Second, the letter emphasized that the two-year constitutional procedure, which culminated in the Commonwealth of Puerto Rico in July, 1952, had popular insular support. The following sums up the message the governor wanted to transmit to the United Nations: “The Commonwealth of Puerto Rico . . . represents the government that the people of Puerto Rico have freely adopted. It reflects our own decision as to the type of institutions and the kind of relationship to the United States which we desire. There can be no doubt that in the full sense of the term, in form as well as in fact, the people of Puerto Rico are now self-governing.” Above all, he wanted the world body to know that the relationship between the island and the continent was in effect a “compact” and that Puerto Rico had become a Commonwealth in “free and voluntary association” with the United States.³⁴

It soon became apparent that neither the Interior department nor the State department completely agreed with the idea of compact as understood by Muñoz Marín. A draft memorandum, dated January 27, 1953, was prepared by the Interior department. The memorandum was to be submitted to the United Nations concerning the cessation of information on Puerto Rico. The draft memorandum was reviewed a couple of days later by Resident Commissioner Fernós-Isern and Abe Fortas, who was serving as counsel to the Puerto Rican government. It is apparent from the revisions proposed by Fernós-Isern and Fortas that most of the difficulty centered around the difference in points of view over the concept of the Commonwealth and its relationship to Congress. Specifically, the divergence of opinion was over the term “compact.” The insular representatives believed that Congress had endorsed the compact idea, since Public Law 600 had been adopted “in the nature of a compact.” They therefore inserted the term “compact” in at least three paragraphs. Paragraph two as revised by Fernós-Isern and Fortas, for instance, read as follows: “In view of the attainment of full measure of self-government under the Constitution formulated and adopted by the people of
Puerto Rico within a compact with the United States... the Government of the United States has decided that it is no longer appropriate for it to submit information on Puerto Rico pursuant to Article 73(e) of the Charter.” They revised, to take another example, paragraph twelve, which in part read, “Four political parties participated in the campaign preceding the referendum; two advocated approval of the compact embodied in the Act of Congress...”

A Mrs. Fleming of the Department of State (?) analyzed the proposed revisions by Fernós-Isern and Fortas. She saw serious objection to the inclusion of “compact,” because it was “an unsettled, fundamental question of American constitutional law.” Congress had differentiated between “compact” and “in the nature of a compact” because it had established various conditions of approval of the constitution. She continued, “Neither the federal legislation nor the legislative history of these laws support [the claim] that there is a ‘compact’ between the United States and Puerto Rico...” Fernós-Isern disagreed with this position in a memorandum he dispatched to the legal counsel for the state department. He cited at length from the Senate and House hearings on H.J.Res.430, and from the Congressional debates on it that followed during the second session of the Eighty-second Congress to prove that Congress had intended to recognize the existence of a compact. Indeed, he argued, Congress was so careful about it that it did not lay down stipulations when Congress finally approved the constitution. Fernós-Isern said he did not understand why the State department raised such questions when neither the Interior department nor Congress had raised any.

Mrs. Fleming’s advice prevailed, however, for in the memorandum that was officially transmitted to the secretary general of the United Nations on March 23, 1953, all references to “compact” as interpreted by the insular government were omitted. Governor Muñoz Marín’s previously cited letter to the president on January 17, 1953, and a copy of the text of the Puerto Rican constitution accompanied the memorandum.

The memorandum reporting the cessation of United States reports on Puerto Rico was divided into four parts, each aiming to show that Puerto Rico had attained a “full measure of self-government” and that it was therefore no longer necessary to continue submitting reports on the island. The first part described in brief the “steady progression of self-government” in
Puerto Rico since the island became United States territory in 1898, and pointed out that the Commonwealth status was a culmination of fifty-four years of that progression. The second part concerned itself with the origin and development of the Commonwealth status between 1948 and 1952. This section emphasized the principle of government by consent. Public Law 600 had declared that it was "'adopted in the nature of a compact,'" but had also stated that the constitution would become effective only "if approved by Congress." 19

The memorandum's third section dwelt on the features of the Commonwealth status. The most important features discussed were the separation of the three branches of the government, a bill of rights assuring essential freedoms, the guaranteeing of representation of minority parties, and so on. The last section spoke about the present status of the Commonwealth. It pointed out that the island had entered into "voluntary association" with the United States and that its status was different from the territories of Hawaii, Alaska, Guam, and the Virgin Islands, where the chief executives and the judges of the highest courts were still appointed by the president. Puerto Rico's relationship with the United States was a matter of "mutual consent." The following sentence sought, however, to highlight the island's relative independence in its affairs: "By the various actions taken by the Congress and the people of Puerto Rico, Congress has agreed that Puerto Rico shall have, under that Constitution freedom from control or interference by the Congress in respect of internal government and administration, subject only to compliance with applicable provisions of the Federal Constitution, the Puerto Rican Federal Relations Act and the acts of Congress authorizing and approving the Constitution as may be interpreted by judicial decision." 20

Presumably to iron out some of the differences and to coordinate the presentation of the Puerto Rican matter before the United Nations, Muñoz Marín invited Benjamin Gerig of the Department of the Interior (?) to San Juan. Gerig was in Puerto Rico from June 19 to 23, 1953, during which time he had two meetings with the governor, Fernós-Isern, and legal advisor José Trias Monge. They discussed at great length the way in which the case should be presented and the kind of responses to make to anticipated questions. Agreements were reached in the following matters: one, the United States delegation should include a
high-ranking Puerto Rican; two, the aim of the delegation was to explain Puerto Rico's status in a manner so as to achieve "the fullest possible understanding"; three, the delegation was to make clear that the decision to cease reporting was not obligatory; four, the matter should be disposed of in the forthcoming General Assembly and not be allowed to drag out into the next session; five, the delegation was to oppose any effort to grant oral hearings to any of the minority groups in Puerto Rico.\textsuperscript{21}

But they could not agree on a question of fundamental importance: could Puerto Rico unilaterally alter the new status? No clear agreement was reached on this point. Gerig realized, however, that the position of the United States delegation on the matter should be "very clear." He pointed out a decision given by the Federal District Court in Puerto Rico that might possibly be utilized by the United States delegation. The Court ruled on a case that in effect said that the agreement could not be changed unilaterally.\textsuperscript{22}

The United States delegation decided to use the Federal District Court's opinion in its presentation. The delegation freely referred to the idea of compact, even though the March 23, 1953, memorandum had avoided all reference to it. On August 27, 1953, Mason Sears, United States delegate to the United Nations, told the General Assembly's Committee on Information from Non-Self-Governing Territories that the Commonwealth was conceived "in the nature of a compact." He continued, "A compact, as you know, is far stronger than a treaty. A treaty usually can be denounced by either side, whereas, a compact cannot be denounced by either party unless it has the permission of the other." Sears referred to the Federal District Court ruling. The resident commissioner, a member of the United States delegation, echoed Sears's argument: "As of July 25, 1952, the jurisdiction of the Federal Government in Puerto Rico is based on a bilateral compact to which it is a party and into which the people of Puerto Rico have entered of their own volition." Frances P. Bolton, another member of the United States team, told the Fourth Committee of the Trusteeship that since a bilateral compact existed between the island and the continent mutual consent was necessary to make any changes.\textsuperscript{23}

The United States delegation succeeded in doing what it had set out to do. It blocked attempts by independentistas, who sought to present their cases in oral hearings. (The PIP, however, sub-
mitted lengthy memoranda.) The delegation was able to respond satisfactorily to the questions raised by delegates from other countries skeptical about the claim that Puerto Rico had ceased being a dependency. The delegates from the Soviet Union, India, Mexico, and Guatemala were especially critical. The United Nations committee approved on November 5, 1953, however, a draft resolution to accept the request by the United States. By the time the draft resolution was debated by a plenary session of the General Assembly on November 27, 1953, sufficient groundwork had been laid by the United States delegation to ensure success. United States Ambassador to the United Nations, Henry Cabot Lodge, Jr., assured the assembly that he had been authorized by his government to say that if at any time the insular legislature requested "more complete and even absolute independence," the president would recommend that Congress grant it. The resolution was adopted by the assembly by a vote of 26 to 16, with 18 member nations abstaining. Among those countries voting affirmatively, incidentally, were fifteen Latin American states. Only Guatemala and Mexico from among the American nations voted against the resolution, while Venezuela and Argentina abstained.

The language of the resolution as adopted appears to be more than was anticipated in the March 23, 1953, memorandum. The idea of a compact was explicitly recognized in the resolution. The resolution read, "Recognized that, in the framework of their Constitution and of the compact agreed upon with the United States of America, the people of the Commonwealth of Puerto Rico have been invested with the attributes of political sovereignty which clearly identify the status of self-government attained by the Puerto Rican people as that of an autonomous political entity." The endorsement by the United Nations, as significant as it was within an international context, did not contribute directly to clarifying the nature of the relationship between the island and the mainland. The Puerto Rican government was to argue later, however, that the United States action had confirmed the general principle that the relationship could not be unilaterally changed. The difficulty arose when attempts were made to translate the principle into reality in specific areas of relationship between Puerto Rico and the United States. Two major attempts were
made in the next fifteen years, and on neither occasion was the matter resolved.

Although Muñoz Marín had earlier expressed a desire to improve and clarify the relationship between Puerto Rico and the United States, it was only in 1959 that he made the first real effort towards this end. On March 19, 1959, the Puerto Rican legislature adopted a joint resolution requesting Congress to implement several proposals in order to clarify insular-continental relations. The proposals were incorporated in a bill (H.R.5926) introduced on March 23, 1959, by Fernós-Isern. A companion measure (S.2023) was sponsored by Senator James E. Murray of Montana a couple of months later. The legislation is generally referred to as the Fernós-Murray bill.

The Fernós-Murray bill sought to replace the Federal Relations Act, whose language was described as “anachronistic,” with the “Articles of Permanent Association of the People of Puerto Rico with the United States.” The “Articles of Permanent Association” contained fifteen articles, which were divided into three groups in Muñoz Marín’s summary of them. The first group was described as “self-executing modifications.” There were several important provisions in this section. One was for the transfer of debt-incurring limit of the Commonwealth and municipal governments from the Federal Relations Act to the Puerto Rican constitution. Another sought to have appeals go direct from the insular Supreme Court to the United States Supreme Court of Appeals. A third provision concerned the resumption of sharing in the common burdens of the Union. It provided that the difference between the United States Internal Revenue tax on liquors and the Puerto Rican Internal Revenue tax on rum shipped to the United States would go to the federal treasury as an insular tax.

The second group of articles consisted of “non-self-executing modifications.” The first of the two most important provisions in this group concerned Puerto Rico’s paying the costs of federal functions on the island and in some cases taking over the responsibility for these functions. The second provision sought to establish machinery to work out a special rate of tariff on articles imported into Puerto Rico from other countries. The example cited by Muñoz Marín was the importation of codfish, a staple food in Puerto Rico, from Canada. A third group of articles was listed as “miscellaneous modifications.” This category included a
provision for mutually exempting insular and mainland bonds from taxation, another for guaranteeing the resident commissioner's seat in Congress in the "compact" itself, a third for establishing procedures in turning over federal property in Puerto Rico to the Commonwealth government, and a fourth for allowing the Federal District Court of Puerto Rico to conduct trials in Spanish whenever necessary.33

In effect the bill sought to attain explicitly moral and legal recognition to the Puerto Rican concept of a "compact," one which could not be altered without Puerto Rican concurrence. This is the way the Washington administration interpreted it, as reflected in the memorandum by assistant director of DTIP Sylvester I. Olson. The bill was intended to give, the memorandum continued, a few more "perquisites" of a state that Puerto Rico did not have, while at the same time liberalizing the fiscal arrangement between the island and the mainland. Indeed, the measure sought to transfer to the Commonwealth government substantial powers then exercised by the federal government.34

A hearing scheduled on June 9, 1959, revealed considerable opposition to aspects of the measure from members of Congress, and the various executive departments of the federal government. Senator Henry Jackson of Washington questioned Governor Muñoz Marín on a substantive issue, one on which the entire Puerto Rican attempt rested. The senator was concerned that the Commonwealth concept of compact meant Congressional compliance with the thesis of bilateral action. If this was so, it would mean that Congress could not legislate for the island without the express consent of the insular government. In such an arrangement, Congress would be restricted in its powers to a point where Puerto Rico could resist federal authority. Approval of the measure, Senator Jackson concluded, would compromise Congressional power indefinitely. The various executive departments, too, raised questions in matters concerning their respective jurisdictions in their written observations. These questions generally dealt with specific aspects of the Fernós-Murray bill. The consensus was that serious practical difficulties would arise if the constitutional aspects of the insular-continental relationship remained unresolved.35

Since many changes were necessary to meet the criticism of Congress and the administration, Fernós-Isern decided to introduce a "clean bill" instead of making amendments. Meanwhile,
Muñoz Marín made a major policy statement in September, 1959, known as the Cidra Declaration. The governor declared that Puerto Ricans would be permitted to vote on a political status of their choice sometime in the future when their per capita income reached a certain level. He limited the status alternatives to only Commonwealth and statehood. The Cidra Declaration was officially approved by the central committee of the PPD. Whatever reasons impelled Muñoz Marín to make such a declaration in the midst of the Puerto Rican effort to improve the Commonwealth status in Congress, it was significant from at least three points of reference. First, it was a tacit admission on the part of Muñoz Marín that the Commonwealth in its present form was not intended to be a permanent solution. Two, the PPD was no longer considering electoral victories every four years as continued endorsement of the status. Three, the party of Muñoz Marín appeared to have moved away more than ever from independence.

A new version of the Fernós-Murray bill was introduced in September, 1959. The latest version softened the idea of “irrevocable concept.” Article IV (a) was changed so as to eliminate any possible interference with the quota system as established by the Sugar Act. Section (f) of the same article deleted language that had placed the burden of proof upon the president in claiming that the “general interest of the United States” required him to reject an insular request to exclude Puerto Rico from a trade agreement. Article VIII was rewritten in order to preserve the supreme authority of the United States over navigation on island waters, harbors, and inlets. A new article, article XVI, was added in response to the Interior department’s criticism that the old version of the bill seemed designed to freeze the status question. The article provided that at some future date, when the per capita income of the people of Puerto Rico reached the level equal to the lowest state in the Union, the entire terms of association would be reviewed.

A special subcommittee of the Committee on Interior and Insular Affairs decided to hold hearings in Puerto Rico. Apparently the committee desired to hear a wider variety of Puerto Rican sentiments before deciding on the bill. The hearings were conducted in the first ten days of December, 1959. Estadistas and independentistas were given the opportunity to testify at the hearings. The estadistas, encouraged by the admission of Alaska
and Hawaii as states in the Union and by their growing electoral strength, insisted that the PPD plan would foreclose statehood, and was in fact a clever and devious scheme to make the island independent eventually. The independentistas, on the other hand, accused the governor of having abandoned independence and of moving towards statehood. They insisted that independence was the only logical solution to the status issue.39

At least three points of view emerged in the hearings on the nature of the relationship between the United States and Puerto Rico. In the end these will probably help to clarify the association, and presumably form the basis of the eventual settlement of a vexing question.

The first view was that of the Commonwealth government as reflected in a lengthy memorandum submitted jointly by Puerto Rico's Attorney General, Hiram Cancio; the governor's legal advisor, Trias Monge; and the Washington law firm of Arnold, Fortas, and Porter, which was retained by the insular government. The memorandum reviewed the constitutional procedure up to 1952 and concluded that a compact had been created. Beyond 1952 two specific instances confirmed its existence: first, the argument used by the United States government when it presented in 1953 Puerto Rico's case before the United Nations; second, the decision by the Court of Appeals for the First Circuit in Figueroa v. People of Puerto Rico (232 F. 2d 615, 620, 1st Cir. 1956), which stated that Public Law 600 had indeed offered a compact. The court had concluded, "We find no reason to impute to the Congress the perpetration of such a monumental hoax." The Fernós-Murray bill, the memorandum continued, did not challenge Congressional powers and federal sovereignty over Puerto Rico in areas closely analogous to those of the states within the Union. But this point did not alter the fact that a compact existed.40

A second position was referred to in a memorandum prepared by Robert Kramer, assistant attorney general of the United States. The memorandum was submitted at the request of the Senate Committee on Interior and Insular Affairs. Kramer discussed the second position as one of the two theories (the other being Puerto Rico's, just reviewed above) being espoused by some people, but was careful not to impute it to either the administration or Congress. According to this theory, the compact involved no more than an agreement on the part of Congress to repeal most of those portions of the Organic Act dealing with
internal matters. Congress, however, continued to exercise plenary authority under the territorial clause of the United States Constitution. Hence, the compact was not intended to effectuate a total or even partial divestiture of that authority. Congress still retained the power to nullify insular acts. The memorandum concluded, "... if the compact were construed to prevent Congress from amending it unilaterally, Congress would be limited in its legislative authority over some matters about which it may legislate with respect to the States." 41

A position that might be termed intermediate was advanced by David M. Helfeld, a professor of law at the University of Puerto Rico. He was concerned less with legality and constitutionality and more with morality and political reality. Or as he himself explained it in his testimony, his approach was an attempt to harmonize legal theory with political reality. Public Law 600, the professor argued, had to be viewed as embodying a political understanding that rested "on morality, on the good faith and the good will of the participants." In view of this, and in view of the realities under which insular-continental relationship operated between 1952 and 1959, it was not likely that Congress would take a regressive step concerning the association. To support his argument, Helfeld pointed out that Congressional action since 1947 had been to advance progressively Puerto Rico's political freedom. His argument implied that even though in theory one Congress could not bind future Congresses, in practice it was not likely that future Congresses would renege on decisions made by earlier Congresses. 42

Fernós-Isern relates that the Senate committee was not expected to report out the bill. The House committee, however, continued to consider the bill. It hired a special counsel, Judge Shriver, to make recommendations. The special counsel consulted with Fernós-Isern in several conferences to agree upon a bill and reported favorably to the committee in May, 1960. However, further consideration of the bill was postponed until the following year because it was thought to be too late in the session for the bill to pass both chambers. The bill was to be reintroduced in 1961 but was abandoned by Muñoz Marín in early January of 1961 "in a surprise move." 43

The difficulty that the 1959 attempt ran into in Congress persuaded Muñoz Marín to try out what Fernós-Isern calls the "Presidential approach." 44 In July, 1962, he wrote a letter to
President John F. Kennedy in which he called for clarification of the Commonwealth in its “moral and juridical basis” to prove false the charge that the status was not a “free choice of the people of Puerto Rico in their sovereign capacity.” The relationship could be strengthened on the basis of “permanent association,” provided that aspects that were not “indispensable” were eliminated. He ended by suggesting that the Puerto Ricans register their preference in a referendum from among three alternatives: Commonwealth, statehood, and independence. President Kennedy endorsed the governor’s sentiments and indicated the propriety of consulting the people of Puerto Rico concerning their status preference.48

Following this exchange, the Muñoz Marín administration sponsored a bill in the insular legislature calling for a plebiscite. Hearings were conducted in which some eighty witnesses testified. The opposition to the bill centered around the need to define “Commonwealth” before submitting the status to referendum, and the absence of any guarantee that Congress would be willing to act upon the results of the referendum.46

On December 31, 1962, the Puerto Rican legislature incorporated the provisions of the bill into a joint resolution and passed it. The joint resolution proposed the “prompt settlement” of the island’s status in a “democratic manner.” The preamble of the resolution defined statehood as “the way enjoyed by the 50 states of the Union,” and independence as “the form already known in other countries of America.” Commonwealth was defined as a “permanent union with the United States,” according to the following principles: first, the affirmation of the sovereignty of the people of Puerto Rico and their right to enter a compact with the United States as a “juridical equal”; second, the establishment of a permanent and irrevocable union based on “common citizenship, common defense, common currency, [and] free market”; third, a clear delineation of United States powers with respect to Puerto Rico, and the reservation of all other powers to the island; fourth, participation by the people of Puerto Rico in certain federal processes, e.g., Puerto Ricans taking part in the election of the president and vice president; fifth, adoption of a formula to provide for insular contribution to the United States treasury. Section 2 of the resolution requested Congress to indicate the form of Commonwealth it was willing to accept before a referendum was conducted.47
In accordance with section 2 of the joint resolution, H.R.5945 and other similar bills were introduced in Congress providing for the creation of a United States–Puerto Rico Compact Commission. The commission was to consist of twelve members, four appointed by the president of the United States, four by the governor of Puerto Rico, and two each by the Senate president and the House speaker of the United States. Its task was to draft a compact along the lines of the definition of the Commonwealth in the joint resolution. The president was specifically authorized to enter into a compact with Puerto Rico, after which the islanders would choose from among an adequately defined Commonwealth and the other two alternatives.48

Independentista and estadista opponents of the bill criticized it sharply at the hearings that followed. They contended that the plan proposed in the bill was not in accordance with the insular joint resolution and was intended to endorse the Commonwealth status. They pointed out that the commission’s task would be limited to defining only the Commonwealth status, and not the other two, and that the president would be authorized to enter into a compact only with respect to the status favored by Muñoz Marín. Furthermore, they objected to including on the referendum ballot the Commonwealth status, which they regarded as temporary, side by side with two permanent alternatives. Some Congressional critics, too, were unhappy with aspects of the bill, and insisted that the commission’s recommendations not be made obligatory for Congress to act upon.49

When it became apparent that the measure would not pass Congress, it was abandoned. In its place a new bill was introduced that was acceptable to independentistas and estadistas.50 It finally became law in February, 1964. This act created a United States–Puerto Rico Commission on the Status of Puerto Rico, whose function was limited to examining all facets of insular-mainland relationship and submitting its findings to the president, Congress, and the Puerto Rican legislature. The original bill contained a provision that stated that Congress had to act upon the commission’s recommendations concerning a plebiscite. This act had no such provision. The commission’s membership, too, was changed. Its thirteen members as finally apportioned were as follows: a chairman, and two persons appointed by the president, four members of Congress, six Puerto Ricans of whom three were Populares, two Estadistas, and one Independentista.51
The commission worked from June, 1964, to August, 1966, under the chairmanship of James H. Rowe, Jr., a Washington attorney who had also headed the 1949 Commission on the Reorganization of the Puerto Rican government. Using the services of advisors and experts in all fields, the commission conducted the most thorough and balanced study of Puerto Rican views on the question of status. Exhaustive hearings were held in San Juan in both Spanish and English. Between May 14 and 18, 1965, the commission heard witnesses on legal-constitutional aspects, while for four days during July and August, 1965, its attention was focused on socio-cultural factors. Finally, between November 27 and December 1, 1965, testimonies concerning economic aspects of insular-continental relationship were heard. Impressed by the scope and breadth of the study, the legislative bodies of the United States and Puerto Rico ordered the printing of an additional 4500 copies of the three separate volumes and the commission report so that its findings might reach a wider reading public.

The report of the commission arrived at conclusions that in themselves were not new. But the commission's thoroughness and relative impartiality gave them a ring of authority. The report stated that all three alternatives were equally valid morally and that any one would confer upon the islanders "equal dignity." Moreover, no legal or constitutional reasons would bar the people of Puerto Rico from choosing any status position. The commission insisted that Puerto Rico had to maintain absolutely the economic growth rate established since 1940, whatever its status. Here, the commission grappled with the problem of extrapolating existing Commonwealth growth patterns upon those advocated by statehood and independence supporters to arrive at some conclusions. It warned that any abrupt change in the direction of either statehood or independence would cause serious economic dislocation. In the commission's judgment, a transition period of at least fifteen years would be necessary in the case of statehood, and a longer unspecified period in that of independence. Whatever status alternative the Puerto Ricans chose, the commission pointed out, it would require "mutual agreement and full cooperation" of the two governments to implement it. The commission's position implied that the Commonwealth status could operate on a permanent basis.

However, the commission's conclusions on the specific questions of compact and the dual operation of insular and continental
powers in Puerto Rico were somewhat circumlocutory. And it was precisely in these areas that the Commonwealth status had showed weaknesses. The report stated, "... the precise allocation of powers between the Puerto Rican Government and the Federal Government is a matter subject to determination only on the basis of the individual analysis of each area of governmental activity." The commission apparently did not wish to decide upon a matter that could be resolved only by the two respective governments. But it did emphasize the bilateral character of the Commonwealth status insofar as "the basic governmental structure" was concerned. Neither government was free to act unilaterally with respect to certain specific areas. Or as the report stated the matter, "... there are in effect two spheres of power: the congressional power and the power of the Government of Puerto Rico. Within each sphere there are areas in which each government is free to act without consultation of the other government and without impinging on the principle against unilateral amendment where the fundamental government character of commonwealth is concerned."  

The commission believed that a referendum would be helpful in establishing the "will of the citizens of Puerto Rico." Consequently, it recommended that a plebiscite be held in which all three alternatives would be presented. Following the plebiscite, the commission continued, ad hoc advisory groups should be established to recommend to the president, Congress, and the governor of Puerto Rico the "appropriate transition measures" to be taken.  

Muñoz Marín, no longer a governor but still wielding enormous influence on the PPD as a senator, was delighted at the commission's conclusion that the Commonwealth status was equally valid. The Populares sponsored a bill calling for a plebiscite on July 23, 1967. Despite the opposition of the PER and PIP members, who argued that a transitory status should not be placed on the ballot next to two permanent alternatives, the measure became law on December 23, 1966. The act called for a referendum on July 23, 1967, for the Puerto Rican people to choose from among the three alternatives. A majority of over 50 percent for any one position was to be construed as representing the will of the people. If either independence or statehood was chosen, Congress would be asked to extend to the island the desired status. A majority vote for the Commonwealth status was
to mean the following: first, reaffirmation of Puerto Rico’s existing status of permanent association with the United States; second, common citizenship was to be the absolute basis for the continued association; third, the government of Puerto Rico would undertake to improve the Commonwealth relationship; fourth, no change was to take place in United States–Puerto Rico relationship without prior approval of the Puerto Rican people.68

The proposed plebiscite caused division in the ranks of the PER and the PIP. The PER decision to boycott the referendum led the party’s vice president, Luis A. Ferré, to organize an opposition of United Statehooders advocating participation in the plebiscite for statehood. Similarly, the PIP’s decision to boycott the polls caused a rift within its ranks. Dissident Populares, too, registered their opposition to their party’s official endorsement of the Commonwealth status and decided to join the Anti-Plebiscite Sovereignty Fund. Muñoz Marín was reasonably certain, however, that the electorate would endorse the Commonwealth status. Indeed, this was probably why he decided on a referendum. He was fully aware of his popularity and of the fact that the Commonwealth had become identified with his leadership. The 69-year-old founder of the PPD, therefore, campaigned hard, traveling to each one of the 76 districts in the island.67

On July 23, 1967, 703,000 (65.8 percent) of the 1,067,000 registered voters went to the polls. The abstention was 30 percent higher than in general elections. The Commonwealth status was endorsed by 60.5 percent of those voting. Statehood registered 38.9 percent of the votes, while independence was supported by a mere 0.6 percent of the voters. Muñoz Marín claimed two days later that the referendum had ended “the century-long debate about political status.” That exaggerated claim was pardonable, given the fact that the Commonwealth status, the creation of Muñoz Marín, Fernós-Isern, and other Populares, had been directly and specifically endorsed for the first time by the Puerto Rican people. The victory also meant that Muñoz Marín could leave politics on a triumphant note.68

It is highly probable that the debate on political status will continue for as long as the question of Commonwealth status does not culminate in a final and permanent solution. Had the 1959 attempt succeeded in improving its terms69 before it was postponed “by agreement,”70 it might have transcended the essentially economic rationale upon which it had been conceived. To be
sure, Congress did not deny that the status was a new and unique experiment in federalism in which Puerto Rico was somewhere between a sovereign country and a state within the Union. The 1959 attempt, however, did not help to define more clearly in practical terms what the experiment was. Consequently it revived a debate that Muñoz Marín had hoped had disappeared. There is no telling whether the debate would end if the island became a state in the Union or an independent country. But politicians in the future might profit from Muñoz Marín's lesson: it is not enough to have a status that accommodates economic realities—it is imperative that a sensitive part of the Puerto Rican personality make-up, known, for want of a better term, as "dignidad," be accommodated too. It will probably take another politician with a bit of poetry in his make-up to harmonize the two. Yet, it is clear that the Commonwealth status has been an acceptable and successful vehicle for the majority of the Puerto Rican people. Whether it would stay as transitional or be declared permanent lies with the future.