

**“YO SOY BORICUA”: TAPPING INTO THE STRENGTH OF THE  
PUERTO RICAN COMMUNITY TO RECLAIM CONTROL OVER ITS  
POLITICAL, SOCIAL, AND ECONOMIC FUTURE\***

ARTICLE

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**INTRODUCTION – THE PERFECT STORM**

**T**HE CONFLUENCE OF NEGATIVE FACTORS ACTING ON PUERTO RICO REQUIRES that the islands<sup>1</sup> become more self-sufficient, in order to mitigate both the current and future potential humanitarian crisis, as well as a fiscal crisis precipitated from more than ten years of recession. Puerto Rico’s export-based economic development initiatives, coupled with its high dependence on imports for the islands’ most vital essentials, have exacerbated the issues associated with mixed political status, especially the agency of Puerto Ricans to determine their political destiny. This combined impact of debt crisis, social exodus, economic underdevelopment, and disaster recovery has left the islands with a low capacity to effectively deal with its ongoing problems. Although Puerto Rico has a passionate cadre working to address the islands’ ailments, those who create and

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<sup>1</sup> Puerto Rico is an archipelago, and therefore is referenced as islands herein.

implement law and policy must play a more robust role in facilitating economic recovery.

First, this paper aims to demonstrate how the history of Puerto Rico is intertwined with mainland colonial practices. It discusses the political reality of having mixed political status, and the United States' consistent re-affirmation of its unfettered power over Puerto Rico. Despite the U.S. government's representations to international audiences that the Commonwealth was indeed autonomous, recent events including the enactment of the Puerto Rico Oversight Management and Economic Stability Act (hereinafter, "PROMESA"), and the inadequate response by the Federal Government following Hurricane Maria, have demonstrated the second-class nature of the United States' treatment of Puerto Rico. This discussion highlights the need for Puerto Rico's revitalization to come from within.

Puerto Rico's economic, social, and political reality call for a mode of economic revitalization that works to retain more wealth on the islands, supports the capacity of Puerto Rican society to better sustain prosperity, and avoids being financially frustrated by the Financial Oversight and Management Board (hereinafter "FOMB"), established by PROMESA. The traditional mode of economic development will not suffice for Puerto Rico's long-term economic revitalization. Puerto Rico, and the vast majority of mainland economic development initiatives, have focused on tax incentive structures that support and incentivize the development of large export-based businesses.<sup>2</sup> This economic development model is inappropriate in the post-Maria Puerto Rican context for two reasons. First, the FOMB has severely constrained the capacity of the government to implement economic development incentives on the Commonwealth level. Second, Puerto Rico's economy is the victim of extractive economic policies and firms. These business and economic practices continuously bleed money from the islands and further lower the ability of Puerto Rico to be more resilient and self-reliant. While the attraction of money outside of the Commonwealth should be an important part of any fully realized economic development scheme, this paper recommends that a well-designed and collaborative community economic development mode be used to capture and retain more resources that will build individual and community economic, social, and political power.

Finally, this paper applies community economic development concepts to the energy and agriculture sectors, two of the most necessary economic goods. Seizing on the recent regrowth of Puerto Rico's agriculture sector,<sup>3</sup> local governments, non-governmental organizations, small businesses, and community members have the opportunity to bolster and sustain this movement forwards. Similarly, as Puerto Rico continues to hotly debate its energy future, robust support for com-

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<sup>2</sup> Carlos E. Díaz Olivo, *Contribuciones, desarrollo económico e identidad nacional*, 68 REV. COL. ABOG. PR 45 (2007); Carlos E. Díaz Olivo, *The Fiscal Relationship Between Puerto Rico and the United States: A Historical Analysis*, 51 REV. COL. ABOG. PR 1 (1991).

<sup>3</sup> Danica Coto, *Puerto Rico finds unexpected source of growth in agriculture*, ASSOCIATED PRESS (Sept. 28, 2016), <https://apnews.com/21a001ef81984f48801382d416c8f660>.

munity-based efforts to localize energy production can provide a unique opportunity to build economic and environmental resiliency.<sup>4</sup> The legal frameworks introduced in these two case studies illustrate the comprehensiveness of the community economic development model and show how it could be a potent tool for revitalizing the Puerto Rican society. By focusing on local market forces, municipalities, and small private organizations as the primary mode of economic development, Puerto Rico can escape the shackle of financial oversight.

## I. MARIA REVEALS THE HARSH REALITY OF PUERTO RICO'S SECOND CLASS STATUS

Hurricane Maria swept through and ravaged the islands in September of 2017. As of this writing, the federal government has still not adequately responded to this humanitarian crisis. After five months of the disaster, over 156,000 United States citizens on Puerto Rico did not have power.<sup>5</sup> Three separate and essential post-hurricane contracts were cancelled: a \$30 million contract for tarps and emergency supplies; a \$300 million electricity infrastructure contract; and a \$156 million meal contract.<sup>6</sup> The commonality between these contracts was mismanagement by the Federal Emergency Management Agency (hereinafter "FEMA").<sup>7</sup> FEMA made these agreements with contractors who either had no capacity to supply the needed goods, or had a record of cancelled past contracts and unfulfilled promises.<sup>8</sup> This begs the question: why would FEMA place the well-being of millions of American citizens in the hands of incompetent contractors? Overall, Puerto Rico saw a disproportionately low amount of aid from the Federal Government in comparison to mainland states affected by other Hurricanes from the 2017 season.<sup>9</sup>

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

<sup>5</sup> U.S. DEP'T OF ENERGY, INFRASTRUCTURE SECURITY & ENERGY RESTORATION, HURRICANES MARIA & IRMA MARCH 7 EVENT SUMMARY, REPORT #94 (2018), [https://www.energy.gov/sites/prod/files/2018/03/f49/Hurricanes\\_Maria\\_Irma\\_Event\\_Summary\\_March\\_07\\_2018.pdf](https://www.energy.gov/sites/prod/files/2018/03/f49/Hurricanes_Maria_Irma_Event_Summary_March_07_2018.pdf).

<sup>6</sup> Patricia Mazzei & Agustin Armendariz, *FEMA Contract Called for 30 Million Meals for Puerto Ricans. 50,000 Were Delivered.*, N.Y. TIMES, (Feb. 6, 2018), <https://www.nytimes.com/2018/02/06/us/fema-contract-puerto-rico.html>; Avery Anapol, *Contractor awarded \$156 million to provide 30 million meals to Puerto Rico only delivered 50,000: report*, THE HILL (Feb. 6, 2018), <http://thehill.com/homenews/administration/372515-contractor-awarded-156-million-to-provide-30-million-meals-to-puerto>.

<sup>7</sup> Stephanie Ebbs, *FEMA Contractor says she is a 'scapegoat' in controversy over canceled contract*, ABC NEWS, (Feb. 9, 2018), <https://abcnews.go.com/Politics/fema-contractor-scapegoat-controversy-over-canceled-contract/story?id=52915221>.

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

<sup>9</sup> Danny Vinik, *How Trump Favored Texas over Puerto Rico*, POLITICO, Mar. 27, 2018, <https://www.politico.com/story/2018/03/27/donald-trump-fema-hurricane-maria-response-480557>.

The Hurricane also made clear the islands' existing systemic problems.<sup>10</sup> From the 1970s onward, the U.S. reduced its spending on infrastructure, and consequently Puerto Rico's infrastructure spending never returned to higher levels.<sup>11</sup> "Puerto Rico citizens felt this deterioration before the hurricane, with increasing commonality of blackouts, decaying roads, undrinkable water, and growing inequality."<sup>12</sup> As Puerto Rico watched its Caribbean neighbors continue to develop their civic and economic capacities through infrastructure investment, the islands became an afterthought for investment by the United States.<sup>13</sup> "Maria has exposed the infrastructural collapse in the islands that is a result of its unique political-economic configuration."<sup>14</sup> Consequently, Puerto Rico's historical relationship with the United States has come to a head.

## II. PUERTO RICO'S POLITICAL HERITAGE

"[H]ow sad and overwhelming and shameful it is to see [Puerto Rico] go from owner to owner without ever having been her own master, and to see her pass from sovereignty to sovereignty without ever ruling herself."

- *Eugenio Maria de Hostos*<sup>15</sup>

### A. *The Colonial Era Under American Rule*

Under pressure from local revolts,<sup>16</sup> the Spanish Prime Minister Práxedes Mateo Sagasta, through the *Charter of Autonomy of 1897*,<sup>17</sup> granted Puerto Rico what has arguably been the greatest valid degree of autonomy since native control was ceded.<sup>18</sup> The Charter granted Puerto Rico the rights to its own legislature and constitution; to set tariffs; and to run its own monetary system, treasury, and judiciary, while also recognizing Puerto Rico's international borders.<sup>19</sup> Spain granted

<sup>10</sup> Carlos Martin, *How Hurricane Maria Exposed Puerto Rico's "colonial boom and bust"*, URBAN INSTITUTE, Oct. 12, 2017, <https://www.urban.org/urban-wire/how-hurricane-maria-exposed-puerto-ricos-colonial-boom-and-bust>.

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

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> MANUEL MALDONADO-DENIS, *PUERTO RICO: A SOCIO-HISTORIC INTERPRETATION* 61 (Elena Vialo, trad., Random House 1972) (1969).

<sup>16</sup> See OLGA JIMENEZ DE WAGENHEIM, *PUERTO RICO'S REVOLT FOR INDEPENDENCE: EL GRITO DE LARES* (Markus Wiener Publishers 1993) (1985).

<sup>17</sup> Charter of Autonomy of 1897, 1 LPRC art. 1 (2016).

<sup>18</sup> See generally Rafael A. Delet, Jr., *The Mandate under International Law for a Self-Executing Plebiscite on Puerto Rico's Political Status, and the right of U.S.-Resident Puerto Ricans to Participate*, 28 SYRACUSE J. INT'L L. & COM. 19 (2001) (arguing that Puerto Rico did not exercise its right to self-determination, as required by international law, with the ratification of the Commonwealth government).

<sup>19</sup> 1 LPRC art. 1.

Puerto Rico its own identity; the Free Republic of Puerto Rico.<sup>20</sup> The Puerto Rico Legislature was elected in March, 1898, and the new governmental administration would begin operations in May.<sup>21</sup> However, on May 12, 1898, the United States Navy began attacking Puerto Rico, and soon had the islands under its control.<sup>22</sup>

The United States and its citizens were fond of Puerto Rico's capture.<sup>23</sup> On July 21, 1898, the United States government issued a press release stating its intentions to keep Puerto Rico.<sup>24</sup> It was evident the U.S. regarded Puerto Rico as a key political and strategic territory.<sup>25</sup> With intense propaganda and promises of prosperity, the Federal Government began its colonization of Puerto Rico and its people.<sup>26</sup> The New York Times, commenting on the United States' invasion of the islands, stated: "[T]he wisdom of taking possession of the Island of Puerto Rico and keeping it for all time. . . . a commanding position between two continents . . . . an island well worth having . . . . the commercial value . . . . a charming Winter resort."<sup>27</sup>

That reality soon became apparent to Puerto Ricans. To the leaders of the United States, those who would decide upon the future of the islands, "Puerto Ricans were ignorant, uncivilized, morally bankrupt, and utterly incapable of self-rule."<sup>28</sup> The United States not only thought Puerto Ricans were incapable of self-government, but also had no intention to allow Puerto Rico into the Union.<sup>29</sup> The ultimate goal was to exploit the colony for its resources and human capital. By

<sup>20</sup> MALDONADO-DENIS, *supra* note 15, at 48-49.

<sup>21</sup> NELSON A. DENIS, *WAR AGAINST ALL PUERTO RICANS: REVOLUTION AND TERROR IN AMERICA'S COLONY* 13 (2015).

<sup>22</sup> *Id.* at 13-14 (At the time, Puerto Ricans living on the islands were split between an elite who supported the United States' intervention, and local peasants and laborers who were "sick of politics, politicians, and promises, no matter what country they came from").

<sup>23</sup> *Id.*

<sup>24</sup> See *Uncle Sam Will Keep Porto Rico*, *NEW YORK JOURNAL AND ADVERTISER*, July 22, 1898, <https://www.loc.gov/resource/sn83030180/1898-07-22/ed-1/?sp=3&st=text&r=-o.16,0,1.32,1.278,0> ("Porto Rico will be kept . . . . Once taken it will never be released. It will pass forever into the hands of the United States . . . . Our flag, once run up there, will float over the islands permanently").

<sup>25</sup> See DENIS, *supra* note 21, at 14-15.

<sup>26</sup> Four days after landing in Puerto Rico, Major General Nelson Appleton issued a proclamation: We have not come to make war against a people of a country that for centuries has been oppressed, but, on the contrary, to bring you protection, not only to yourselves but to your property, to promote your prosperity, to bestow upon you the immunities and blessings of the liberal institutions of our government . . . and to give the advantages and blessings of enlightened civilization.

*Id.* at 16.

<sup>27</sup> Amos K. Fiske, *Puerto Rico as a Permanent Possession*, *N. Y. TIMES*, Jul. 11, 1898, <https://timesmachine.nytimes.com/timesmachine/1898/07/11/105963326.pdf>.

<sup>28</sup> DENIS, *supra* note 21, at 17; see also S. S. Harvey, *Americanizing Puerto Rico*, *N. Y. TIMES*, February 22, 1899. <https://timesmachine.nytimes.com/timesmachine/1899/02/22/102409591.pdf> (describing the people of Puerto Rico as uneducated, "simple-minded [and] harmless [people who are only interested in] wine, women, music, and dancing").

<sup>29</sup> 33 CONG. REC. 3612 (1900).

1930, 45 percent of all arable land in the islands had been turned into sugar plantations, largely due to the private interests of Charles Herbert Allen, the first civil governor of Puerto Rico appointed by the United States.<sup>30</sup> By 1934, 80 percent of the islands' sugar-cane farms were American-owned.<sup>31</sup> Part of that sugar empire later became known as Domino Sugar.<sup>32</sup>

Decisions by the Federal Government branches revealed the United States' disposition towards Puerto Rico. In 1922, the U.S. Supreme Court held that the Federal Constitution does not automatically apply to Puerto Rico.<sup>33</sup> In a manner ironically similar to the recent enactment of PROMESA, President Coolidge appointed Frederick G. Holcomb to audit Puerto Rico in 1926.<sup>34</sup> The Court declared unconstitutional Puerto Rican legislation setting a minimum wage for Puerto Ricans, further chipping away at their political integrity.<sup>35</sup> Local recognition of the imperial oppression led to the formal organization of pro-independence political groups.<sup>36</sup>

Much like his father and former President of the Senate of Puerto Rico, Luis Muñoz Marín actively advocated for Puerto Rico's autonomy and independence.<sup>37</sup> On 1940, he founded the Popular Democratic Party, promising the people of Puerto Rico during his campaign *Pan, Tierra, Libertad* (Bread, Land, Liberty).<sup>38</sup> However, the FBI had a one-page report detailing Mr. Muñoz's use of drugs, labeling him a heavy drinker and a narcotics addict.<sup>39</sup> The report also seemed to indicate Mr. Muñoz had been involved in an important narcotics case at the time and had not yet faced prosecution.<sup>40</sup> With this information in hand, the FBI pressured Mr. Muñoz to suppress any notions of independence on the islands.<sup>41</sup>

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<sup>30</sup> DENIS, *supra* note 21, at 29.

<sup>31</sup> *Id.*

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

<sup>33</sup> See *Balzac v. Porto Rico*, 258 U.S. 298 (1922).

<sup>34</sup> DENIS, *supra* note 21, at 29.

<sup>35</sup> *Id.* at 30.

<sup>36</sup> See *PUERTO RICO UNDER COLONIAL RULE: POLITICAL PERSECUTION AND THE QUEST FOR HUMAN RIGHTS* 71 (Ramón Bosque-Pérez & José J. Colón Morera, eds.) (2006) (Seeking complete and unconditional independence of Puerto Rico from the United States, the Nationalist Party of Puerto Rico was founded in 1922. The party, whose leader Pedro Albizu Campos spoke out freely against federal imperialism, was quickly seen as a threat by the United States. In response, the FBI followed and infiltrated the party's organization, creating a series of *carpetas* (surveillance files) of Nationalist members, leading to many arrests and deaths).

<sup>37</sup> DENIS, *supra* note 21, at 98.

<sup>38</sup> *Id.*

<sup>39</sup> FBI FILES, SUBJECT: LUIS MUÑOZ MARÍN, FILE NUMBER 100-5745, SECTION I, 3.

<sup>40</sup> *Id.* Section I, 3.

<sup>41</sup> When U.S. Senator Millard Tydings introduced a bill in Congress that would grant Puerto Rico independence, Mr. Muñoz personally travelled to Washington and lobbied against the bill. See DENIS, *supra* note 21, at 98.

Within a few years, Luis Muñoz Marín had completely abandoned all support for Puerto Rico's independence and the Popular Democratic Party removed *independence* from its political platform.<sup>42</sup> As one of his last acts as President of the Senate of Puerto Rico, Mr. Muñoz passed *Public Law 53*, also known as *the Gag Law*, which made it a felony to display or own a Puerto Rican flag, to speak in favor of independence, to print, publish, sell, or exhibit any material undermining Puerto Rico's government, and to organize or assemble with similar intent.<sup>43</sup> Despite the apparent change in his political views, Mr. Muñoz did not lose the public vote. Five months after passing the *Gag Law*, Luis Muñoz Marín became the first elected governor of Puerto Rico, leading the way to the Commonwealth of Puerto Rico.<sup>44</sup>

### B. *Creation of the Commonwealth*

The origins of Puerto Rico's current rights and status began before the events discussed above, within the Treaty of Paris of 1898, which placed control of the islands in the hands of Congress.<sup>45</sup> Exercising that power, Congress passed the *Foraker Act*, ending the military government in Puerto Rico and establishing a civil government.<sup>46</sup> The Act established a system of local government in Puerto Rico, providing for the President's appointment of the governor, an eleven-member Executive Council (the upper house of Puerto Rico's Congress), a Supreme Court, and a United States District Court.<sup>47</sup> The people of Puerto Rico were allowed to vote for members of the Puerto Rican Congress' lower house, the House of Delegates.<sup>48</sup> All legislation passed by Puerto Rico, however, was subject to Congressional veto.<sup>49</sup> Finally, the *Foraker Act* created the office of Puerto Rico's Resident Commissioner in Congress, but denied any right to vote.<sup>50</sup> With Puerto Rico's administration shared by Congress and the insular government, attention turned to the applicability of the Federal Constitution to Puerto Rico.

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<sup>42</sup> *Id.* at 104.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 105.

<sup>45</sup> Treaty of Paris, art. IX, Dec. 10, 1898, 30 Stat. 1754 (of course, that proclamation was axiomatic since Congress already had the constitutional power to govern and administer United States' territories); see U.S. CONST. art. IV, § 3.

<sup>46</sup> Foraker Act, ch. 191, 31 Stat. 77 (1900).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* Under the Spanish Charter of Autonomy of 1897, Puerto Rico had 24 voting delegates in the Spanish Cortes; see DeClet, Jr., *supra* note 18, at 29 n.87.



In a series of cases in 1900, the Supreme Court of the United States interpreted Congress' power under the Constitution's Territorial Clause,<sup>51</sup> and classified American territories as either incorporated or unincorporated.<sup>52</sup> According to the doctrine of territorial incorporation, an incorporated territory is on the path to statehood, while an unincorporated territory is governed exclusively by Congress under the Territorial Clause.<sup>53</sup> In *Downes v. Bidwell*, the Court held that United States territories are "subject to the sovereignty of and . . . owned by the United States,"<sup>54</sup> therefore they are not foreign to the United States in an international sense, but rather are "foreign to the United States in a domestic sense."<sup>55</sup> The effect of the doctrine of territorial incorporation was to place Puerto Rico outside the ordinary territory-to-state process through which states are admitted into the Union.<sup>56</sup> The Court also held that the protections of the Federal Bill of Rights did not necessarily apply to territories.<sup>57</sup>

Puerto Rico's political status was marginally improved by several acts of Congress. First, Puerto Rico became an organized territory under the *Jones Act of 1917*.<sup>58</sup> The Act granted statutory citizenship to all Puerto Ricans.<sup>59</sup> The Act also allowed both houses of the insular legislature to be elected by the people of Puerto Rico,<sup>60</sup> while also authorizing the creation of a Puerto Rican Bill of Rights.<sup>61</sup> Second, in 1947, Congress passed the *Puerto Rico Elective Governor Act*, allowing Puerto Ricans to elect their own governor.<sup>62</sup> As mentioned above, Luis Muñoz Marín was the first elected governor of Puerto Rico and shortly after, Congress enacted *Public Law No. 600 (PL 600)* in 1950.<sup>63</sup>

*PL 600* allowed Puerto Rico to draft its own constitution, subject to approval by Congress and the people of Puerto Rico.<sup>64</sup> On March 3, 1952, Puerto Rico voted

<sup>51</sup> U.S. CONST. art. IV, § 3, cl. 2. ("Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States").

<sup>52</sup> See *Huus v. New York & Porto Rico S.S. Co.*, 182 U.S. 392 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Goetze v. United States*, 182 U.S. 221 (1901); *De Lima v. Bidwell*, 182 U.S. 1 (1901).

<sup>53</sup> See Willie Santana, *Incorporating the Lonely Star: How Puerto Rico Became Incorporated and Earned a Place in the Sisterhood of States*, 9 TENN. J. L. & POL'Y 433, 435-36 (2014).

<sup>54</sup> *Downes*, 182 U.S. at 341.

<sup>55</sup> *Id.*

<sup>56</sup> Santana, *supra* note 53, at 435-36.

<sup>57</sup> *Downes*, 182 U.S. at 268, 282.

<sup>58</sup> Puerto Rican Federal Relations Act of 1917, Pub. L. No. 64-368, 39 Stat. 951 (1917).

<sup>59</sup> *Id.* at 953.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> An Act to amend the Organic Act of Puerto Rico of 1947, Pub. L. No. 80-362, 61 Stat. 770 (1947).

<sup>63</sup> Puerto Rico Federal Relations Act of 1950, Pub. L. 81-600, 64 Stat. 319 (1950) (codified at 48 U.S.C. § 731).

<sup>64</sup> *Id.*

and approved its new constitution under *Estado Libre Asociado de Puerto Rico* (Commonwealth of Puerto Rico).<sup>65</sup> Congress then approved it on July 3, 1952,<sup>66</sup> formalizing Puerto Rico's political status that still prevails to this day. Following approval of the commonwealth status, a flock of US investors, aptly called carpet-baggers, came to Puerto Rico to exploit the benefits of its colonial status.<sup>67</sup> Throughout the next decades, Congress enacted a series of statutory financial incentives which benefitted and attracted large United States corporations.<sup>68</sup> To this day, Puerto Rico remains an organized, unincorporated territory of the United States, arguably in violation of international law.<sup>69</sup>

### C. *Puerto Rico on the International Political Stage*

“But one day our patience will end . . . because man is essentially free, and freedom is a force stronger than any empire on earth.”<sup>70</sup>

- Pedro Albizu Campos, *Ponce 1949*

The legitimacy of the Commonwealth status has been questioned not only by the United States,<sup>71</sup> but by the rest of the world.<sup>72</sup> Under International Law, all people have a right to self-determination, self-government, and to determine their political status.<sup>73</sup> One of the purposes of the Charter of the United Nations is “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.”<sup>74</sup> Article 73 of the U.N. Charter directs member States owning territories to develop self-government in those territories.<sup>75</sup> In more explicit terms, U.N. General Assembly Resolution 1514 states that “[a]ll peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”<sup>76</sup> According to Resolution 1541, there are only three valid

<sup>65</sup> Deplet, Jr., *supra* note 18, at 34.

<sup>66</sup> Joint resolution approving the constitution of the Commonwealth of Puerto Rico which was adopted by the people of Puerto Rico on March 3, 1952, Pub. L. 82-447, 66 Stat. 327 (1952).

<sup>67</sup> DENIS, *supra* note 21, at 257-59.

<sup>68</sup> *Id.*

<sup>69</sup> See Deplet, Jr., *supra* note 18, at 39.

<sup>70</sup> Albizu Campo's Speech in Ponce, Puerto Rico, on March 21, 1949, recorded and transcribed by the FBI, radio broadcast over WPRP (Ponce), WCMN (Arecibo), and WITA (San Juan). See also YouTube Channel Pedro Albizu Campos.

<sup>71</sup> See *Puerto Rico v. Sánchez Valle*, 136 S. Ct. 1863 (2016); *Harris v. Rosario*, 446 U.S. 651 (1980); *Califano v. Gautier Torres*, 435 U.S. 1 (1978).

<sup>72</sup> See Deplet, Jr., *supra* note 18, at 39 n.158.

<sup>73</sup> *Id.* at 35-36.

<sup>74</sup> U.N. Charter art. 1.

<sup>75</sup> *Id.* at art. 73.

<sup>76</sup> G.A. Res. 1514 (XV), U.N. Doc. A/RES/ 1514 (XV) (Dec. 14, 1960).

exercises of full self-government: “(a) Emergence as a sovereign independent State; (b) Free association with an independent State; or (c) Integration with an independent State.”<sup>77</sup>

Since it was conquered by Spain, Puerto Rico has never been a true sovereign. The only argument that Puerto Rico has exercised its rights to self-determination and self-government is that the Commonwealth status equates to a free association with the United States.<sup>78</sup> However, *Public Law 600* required that Commonwealth status could not be changed without the consent of both the American and Puerto Rican peoples.<sup>79</sup> Moreover, Puerto Rico does not have the power to negotiate with other countries or any other foreign relations capacity.<sup>80</sup> Therefore, the current status does not equate to a free association under International Law.

Nevertheless, the Supreme Court of the United States has previously held that Congress’ power over Puerto Rico emanates from the Territorial Clause of the Constitution, and not from any compact with Puerto Rico.<sup>81</sup> Congress can freely alter its political relation to Puerto Rico under the Territorial Clause.<sup>82</sup> This is not in accord with International Law.<sup>83</sup> As a result, there exists no basis to argue that Puerto Ricans have exercised their right to self-determination through the ratification of the Commonwealth of Puerto Rico. Today, Congress still exercises unilateral control over the affairs of Puerto Rico, with the most recent example being the enactment of the Puerto Rico Oversight, Management, and Economic Stability Act in 2016.<sup>84</sup>

### III. PROMESA’S NEOCOLONIAL TENDENCIES

PROMESA reaffirms Puerto Rico’s colonial status. Since 1970, Puerto Rico’s economy became reliant on federal incentives, including Section 936 of the Internal Revenue Code, which created an economic boom in Puerto Rico.<sup>85</sup> However, the eventual phasing out of these incentives led to a decade-long recession.<sup>86</sup>

<sup>77</sup> G.A. Res. 1541 (XV), U.N. Doc. A/RES/ 1541 (XV) (Dec. 15, 1960).

<sup>78</sup> *Id.*

<sup>79</sup> See, Deplet, Jr., *supra* note 18, at 38.

<sup>80</sup> *Id.* at 35 n.137.

<sup>81</sup> *Harris v. Rosario*, 446 U.S. 651, 652 (1980).

<sup>82</sup> *Id.*; see also *Califano v. Gautier Torres*, 435 U.S. 1 (1978).

<sup>83</sup> Under international law, the right of self-determination is a natural right of peoples, not a right that is attached to a territory; see G.A. Res. 1514 (XV), U.N. Doc. A/RES/ 1514 (XV) (Dec. 14, 1960) (declaring that “all peoples have the right to self-determination”).

<sup>84</sup> Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), Pub. L. No. 114-187, 130 Stat. 549 (codified at 48 U.S.C. § 2101 (2016)).

<sup>85</sup> See DENIS, *supra* note 21, at 258.

<sup>86</sup> *Id.*; Scott Greenberg & Gavin Ekins, *Tax Policy Helped Create Puerto Rico’s Fiscal Crisis*, TAX FOUNDATION (June 30, 2015), <https://taxfoundation.org/tax-policy-helped-create-puerto-rico-s-fiscal-crisis>.

Without a sufficient tax base, Puerto Rico was forced to take on debt to pay its obligations and provide basic public services to its people.<sup>87</sup> With the islands owing around 74 billion dollars in public debt as of 2013, people have left in masses to states such as New York, Texas, and Florida.<sup>88</sup> Having ruled Puerto Rico is not a separate sovereign,<sup>89</sup> placing it outside of normal bankruptcy proceedings, the federal government took full control over Puerto Rico's finances through PROMESA.<sup>90</sup>

A. *Key Aspects and Powers of PROMESA*

PROMESA's underlying goal is to assure Puerto Rico is solvent and can meet its credit obligations,<sup>91</sup> with the premise that regaining access to capital markets would allow Puerto Rico to meet its debt obligations and lay a foundation for future growth.<sup>92</sup> The executive force behind PROMESA is the FOMB, under Title I of PROMESA.<sup>93</sup> Pursuant to Section 101 of PROMESA, the President appoints seven members to the FOMB from a list provided by congressional leaders.<sup>94</sup> The Governor of Puerto Rico, or their designee, is allowed to serve on the FOMB without voting rights.<sup>95</sup> The FOMB can conduct its business "to the exclusion of the ex officio member."<sup>96</sup>

The FOMB has the power to control the islands' budgets, and ensure fiscal plans are enacted and enforced.<sup>97</sup> It also has the power to ensure the implementation of all necessary reforms, so the islands attain fiscal solvency and regain "access to capital markets."<sup>98</sup> The Act grants the FOMB broad authority over Puerto Rico's

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<sup>87</sup> Diaz Olivo, *supra* note 2.

<sup>88</sup> More than 5 million Puerto Ricans currently live in the U.S. mainland. It is estimated that Puerto Rico will lose 40 % of its population by 2050. See Michael Connor, *Puerto Rico's Population Drops as Economy Wobbles*, REUTERS, Sept. 10, 2013, <https://www.reuters.com/article/us-puertorico-population-analysis/analysis-puerto-ricos-population-drops-as-economy-wobbles-idUSBRE9890JZ20130910>.

<sup>89</sup> *Puerto Rico v. Sánchez Valle*, 136 S. Ct. 1863 (2016).

<sup>90</sup> Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), Pub. L. No. 114-187, 130 Stat. 549 (codified at 48 U.S.C. § 2101 (2016)).

<sup>91</sup> HOUSE COMMITTEE ON NATURAL RESOURCES, 114TH CONG., H.R. 5278 "PUERTO RICO OVERSIGHT, MANAGEMENT, ECONOMIC STABILTY ACT" (PROMESA) SECTION BY SECTION (2016), [https://naturalresources.house.gov/uploadedfiles/section\\_by\\_section\\_6.6.16.pdf](https://naturalresources.house.gov/uploadedfiles/section_by_section_6.6.16.pdf).

<sup>92</sup> *Id.*

<sup>93</sup> 48 U.S.C. § 2121.

<sup>94</sup> See, HOUSE COMMITTEE ON NATURAL RESOURCES, *supra* note 91, at 5.

<sup>95</sup> *Id.* at 6.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 7.

<sup>98</sup> *Id.* at 2.

instrumentalities.<sup>99</sup> The FOMB may force the sale of government assets, the consolidation of government agencies and the reduction of Puerto Rico's public workforce.<sup>100</sup>

The FOMB can also audit financial statements, conduct hearings, and request or subpoena information from any employee, office, or agency of Puerto Rico's government.<sup>101</sup> Puerto Rico's government officials are subject to criminal and other disciplinary measures for knowingly providing false and misleading information, or refusing or failing to take any action ordered by the FOMB, and for other acts.<sup>102</sup> Such actions could include measures to affect salaries, fire employees, reduce pensions, and to sell off government land and assets.<sup>103</sup> Experts suggest that Congress has legitimized the efforts of private development, with an appointed powerful FOMB, holding powers to clear the path for Puerto Ricans to lose their islands.<sup>104</sup>

The FOMB has the authority to both recommend and enforce actions to "promote the financial stability [and] economic growth."<sup>105</sup> In addition to this hybrid legislative/executive power, it also has powers to veto acts by the Puerto Rican Legislature and "to prevent the execution of legislative acts, executive orders, regulations, rules and contracts that undercut economic growth initiatives."<sup>106</sup> This power calls into question the legitimacy of Puerto Rico's autonomy and control of its internal affairs.

The FOMB has the discretion to articulate how any act by a local government branch or instrumentality "undercut[s] economic growth initiatives."<sup>107</sup> Congress, and in turn the FOMB, can treat Puerto Rico differently than the several states and act contrary to the laws of Puerto Rico with only a "rational basis."<sup>108</sup> Through

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<sup>99</sup> 48 U.S.C. § 2141-2142.

<sup>100</sup> *Id.*

<sup>101</sup> See HOUSE COMMITTEE ON NATURAL RESOURCES, *supra* note 91, at 6.

<sup>102</sup> 48 U.S.C. § 2124. The Board is also given an executive power to ensure the enforcement of applicable territorial law prohibiting public employees from striking or participating in government lock-outs. *Id.*

<sup>103</sup> See Nelson A. Denis, *An Empty Promesa for Puerto Rico: the "new" Financial Control Bill, WAR AGAINST ALL PUERTO RICANS REVOLUTION AND TERROR IN AMERICA'S COLONY*, <https://waragainstallpuertoricans.com/2016/03/27/another-empty-promesa-for-puerto-rico-the-new-financial-control-authority-bill> (last visited May 14, 2018).

<sup>104</sup> *Id.*

<sup>105</sup> HOUSE COMMITTEE ON NATURAL RESOURCES, *supra* note 91, at 9.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> See *Harris v. Rosario*, 446 U.S. 651, 652 (1980); see also Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), Pub. L. No. 114-187, 130 Stat. 549 (codified at 48 U.S.C. § 2103 (2016)) ("The provisions of this Act shall prevail over any general or specific provisions of territory law, State law, or regulation that is inconsistent with this Act.").

this act and the power it grants to an unelected body, Congress has reiterated its plenary power over Puerto Rico.<sup>109</sup>

Under Section 104 of PROMESA, the FOMB can enter into judicially unchallengeable contracts between debtors and creditors and protect preexisting debt restructuring agreements.<sup>110</sup> What's more, the FOMB can accept gifts and donations.<sup>111</sup> The FOMB may also seek judicial enforcement of its authority to carry out the goals of PROMESA.<sup>112</sup> While allowing the FOMB to impute criminal sanctions and initiate civil actions within the scope of its responsibilities,<sup>113</sup> Section 105 is designed to protect the FOMB and its employees from any liability claims.<sup>114</sup> Constitutional or legal challenges to PROMESA or any actions by the FOMB are to be treated by an expedited judicial review process by the Federal Courts.<sup>115</sup> The FOMB is also protected from interference by laws or actions by the Governor or the Legislature of Puerto Rico.<sup>116</sup>

Under PROMESA, the FOMB is tasked to protect and ensure fairness to creditors and the priority of debts in any plan to restructure or adjust Puerto Rico's debt.<sup>117</sup> Unlike states and their municipalities, which would turn to Chapter nine of the U.S. Bankruptcy Code as the process to adjust their debts, Puerto Rico does not have this option.<sup>118</sup> Puerto Rico is bound by PROMESA pursuant to the Territorial Clause, and only the FOMB can submit a debt adjustment plan for creditor vote and judicial approval.<sup>119</sup> The Act prioritizes creditors' interest by giving them the power to approve or disapprove any debt adjustment, regardless of the effects on the people of the islands.<sup>120</sup> At no point are the people of Puerto Rico consulted or given a meaningful voice in a debt they can be bound to pay.

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**109** See Juan C. Dávila, *PROMESA: Puerto Rico's "Restructure" at \$4.25 an Hour*, HUFFINGTON POST, (Jun. 22, 2006), [https://www.huffingtonpost.com/juan-c-davila/promesa-puerto-ricos-rest\\_b\\_10615610.html](https://www.huffingtonpost.com/juan-c-davila/promesa-puerto-ricos-rest_b_10615610.html) (“[W]hen the United States Congress approved [PROMESA], they sustained the capacity of imposing legislation over Puerto Rico's Government and retaining ultimate power over all of Puerto Rico's affairs”).

**110** 48 U.S.C. § 2124 (2016).

**111** *Id.*

**112** *Id.*

**113** *Id.*

**114** *Id.* § 2125.

**115** *Id.* § 2126.

**116** *Id.* § 2128.

**117** *Id.* at 2.

**118** “Under Chapter 9, the locality (debtor) retains plenary and exclusive control over its finances and proposing a debt adjustment plan. Under PROMESA, the Oversight Board will ensure Puerto Rico remedies its finances. The Board will play a key role to ensure fairness to creditors and debts in any debt adjustment plan”; 11 U.S.C. §109(c).

**119** *Id.*

**120** *Id.*

Title III of PROMESA provides the means for debtors to restructure their debts.<sup>121</sup> Debtor-Creditor cases are brought under the exclusive jurisdiction of the Federal District Courts. Cases brought under Title III are governed by the Federal Rules of Bankruptcy Procedure.<sup>122</sup> Plans of adjustment can only be filed by the FOMB, and may be repeatedly changed and modify adjustment plans before the plan is confirmed by a court.<sup>123</sup> In cases brought under Title III, the FOMB represents the debtor.<sup>124</sup> This means that the FOMB is authorized to act as imposed counsel for Puerto Rico and its different instrumentalities; can submit and modify debt adjustment plans; and can take any judicial action without consent.

*B. Amending PROMESA to Protect Puerto Rico's Municipal Power*

Despite prioritizing the payment of the public debt, an alternate route for Puerto Ricans living on the islands is to achieve self-sufficiency by engaging in innovative community-empowering efforts. The question then becomes whether or not Puerto Rican communities could achieve these goals under the fiscal regime of PROMESA.

Under PROMESA's framework, one of Puerto Rico's last remaining sources of autonomous power lies within its municipal structure. Puerto Rico's municipalities are not subject to strict financial oversight by the Commonwealth's legislature.<sup>125</sup> The role of the Commonwealth in the administration of municipal budgets is to set aside a percentage of the islands' budget for municipal appropriation, and to ensure every municipal budget complies with the law.<sup>126</sup> In that manner, municipalities are regarded as separate governmental entities with administrative and legislative powers.<sup>127</sup> Under Puerto Rican law, municipalities maintain a level of budgetary autonomy.

While PROMESA and Congress' power over Puerto Rico threatens this municipal autonomy, this power exists only at the outer limits of their authority. The full extent of the Act's power is yet to be seen and it is likely the FOMB has the authority for fiscal intervention at the local municipal level. Under Section 101(d) of PROMESA, the FOMB has the power, "in its sole discretion at such time as the FOMB determines to be appropriate, [to] designate any territorial instrumentality as a covered territorial instrumentality subject to the requirements of [the] Act."<sup>128</sup>

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<sup>121</sup> 48 U.S.C. § 2161 (2016).

<sup>122</sup> *Id.* § 2170.

<sup>123</sup> *Id.* §§ 2172-2174.

<sup>124</sup> *Id.* § 2175.

<sup>125</sup> Ley de Municipios Autónomos de Puerto Rico, Ley Núm. 81 de 30 de agosto de 1991, 21 LPRA § 4001.

<sup>126</sup> *Id.* § 4303.

<sup>127</sup> *Id.* § 4004.

<sup>128</sup> Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), Pub. L. No. 114-187, 130 Stat. 549 (codified at 48 U.S.C. § 2121 (2016)).

In other words, it is possible that the FOMB could bring any of Puerto Rico's municipalities within the scope of its powers, and revise, reject, or modify their budgets, in contravention of Puerto Rican municipal law.<sup>129</sup> However, reflecting on the capacity of the FOMB to specifically deal with municipal budgets, it is unlikely it would use its line-item veto power to frustrate municipal policy goals.

Theoretically, one alternative is to amend PROMESA. For example, PROMESA does not afford Puerto Rico any meaningful opportunity for public participation, “[a] vital and guiding principle of democratic governance.”<sup>130</sup> Fealty to the principle of public participation could justify amending PROMESA to reserve some acceptable level of agency and democratic participation for Puerto Ricans in the decision-making process of the FOMB. One way to efficiently achieve that would be to amend Section 101(d) and other relevant provisions of the Act to include language that excludes Puerto Rico's municipalities from designation as “covered territorial instrumentalit[ies].”<sup>131</sup> This would expressly protect these municipalities from the FOMB's budgetary oversight.

As to any future municipal-level opportunities through the FOMB, the recently proposed Fiscal Plan for Puerto Rico lends some hope.<sup>132</sup> It is notable that in its government restructuring proposals, the plan excludes any immediate plans to modify the current municipal structure.<sup>133</sup> Although the plan does aim to greatly reduce municipal appropriation of funds,<sup>134</sup> it also seems to suggest that the goal with municipalities is to empower their abilities to offer community services in order to reduce the central government's expenditures.<sup>135</sup> In fact, the manner in which municipalities are treated in this fiscal plan suggests two things: (1) the FOMB is not interested in intervening at local municipal level, at least for the moment; and (2) the plan allows for the type of community-level activity envisioned by this paper without any apparent or immediate limitations by the FOMB. Puerto Rico should seek to ensure that PROMESA does not alter the agency of its municipalities, which could very well be the best opportunity for self-reliance and economic revitalization for Puerto Rican communities.

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129 See 21 LPRA § 4004.

130 *International Day of Democracy 15 September*, INTER-PARLIAMENTARY UNION (2015), <http://archive.ipu.org/dem-e/idd/2015-participation.htm>.

131 48 U.S.C. § 2121 (Section 101(d)(A) currently reads: “In general, [a]n Oversight Board, in its sole discretion at such time as the Oversight Board determines to be appropriate, may designate any territorial instrumentality as a covered territorial instrumentality that is subject to the requirements of this Act”).

132 See FISCAL PLAN, PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY (proposed Feb. 28, 2017), <https://noticiasmicrojuris.files.wordpress.com/2017/03/340572792-pr-fiscal-plan-2017.pdf>.

133 *Id.*

134 *Id.* at 47.

135 *Id.*



#### IV. HOMEGROWN ECONOMY FOR PUERTO RICO: USING THE COMMUNITY ECONOMIC DEVELOPMENT MODEL TO LOCALIZE NECESSARY ECONOMIC GOODS

Puerto Rico's export-based economic development initiatives, coupled with its high dependence on imports for the islands' most vital essentials, have failed to achieve their purported economic, social, and political goals. Furthermore, the combined impact of debt crisis, social exodus, economic underdevelopment, and disaster recovery has left the islands with a low capacity to effectively deal with its ongoing problems. Therefore, the islands are left with little choice but to capture prosperity from within, on the community level, by supporting a shift to a localized economy for essential economic goods. Although Puerto Rico has a passionate cadre working to address the islands' ailments, lawmakers must play a more robust role in facilitating economic recovery.

The traditional mode of economic development is not a sustainable strategy for Puerto Rico's long-term fiscal and humanitarian recovery. As previously stated, Puerto Rico, like the vast majority of mainland economic development initiatives, have focused on tax incentive structures that support and incentivize the development of large, export-based businesses.<sup>136</sup> This trickle-down economic development model is inappropriate in the post-Maria Puerto Rican context for two reasons. First, as established above, the Financial Oversight Management FOMB has severely constrained the capacity of the Commonwealth's government to implement economic development incentives in this manner at all, but instead leaves the municipal level somewhat free of its PROMESA's budgetary constraints. Second, Puerto Rico's economy has been the victim of mainland extractive economic policies and firms. These business and economic practices continuously bleed money from the islands and further lower the ability of Puerto Rico to be more economically resilient and self-reliant.

Given this reality, this section advocates for the Puerto Rican government to implement more comprehensive community economic development policies as a broad-based solution to address the wide range of negative factors affecting the islands by facilitating the capacity of localities to support, grow, and sustain new businesses on the community level. Community level economic development strives to eliminate the imbalance of social and economic power by providing equal access to economic opportunities. Additionally, by focusing on small firms, non-governmental organizations, and other private organizations through municipal level implementation, Puerto Rico can build individual wealth and grow the tax base as the path of least resistance under PROMESA. By contrast, the traditional mode of large tax incentives for businesses by the Commonwealth government would be subject to direct oversight from PROMESA.

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<sup>136</sup> GREG LEROY ET. AL., *SHORTCHANGING SMALL BUSINESS: HOW BIG BUSINESSES DOMINATE STATE ECONOMIC DEVELOPMENT INCENTIVES*, *GOOD JOBS FIRST* (2015), <http://www.goodjobsfirst.org/sites/default/files/docs/pdf/shortchanging.pdf>.

A. *The Problem with the Traditional Focus of Economic Development Models*

Traditional economic development focuses on tradable sectors, or businesses with the focus of exporting goods and services, most often by offering tax rebate incentives.<sup>137</sup> This focus does not produce its purported benefits, and instead lowers regional economic prosperity.<sup>138</sup> Therefore, a refocusing on community businesses, and altering Puerto Rican law to build the community's capacity to support, grow, and sustain individual wealth creation, is required. Under PROMESA's constraints, shifting economic development efforts in this way has significant potential for success.

Generally, large companies receive a disproportionate share of economic development incentives,<sup>139</sup> as they receive between 80 and 96 percent of state economic development incentives.<sup>140</sup> A survey of small business leaders identified public goods such as education, transportation, and job training that benefit all employers as deserving more support.

It is illuminating to examine East-West Gateway, a council of local governments in the bi-state St. Louis, MO region, which undertook a study of the effectiveness of regional economic development incentives, examining impacts on the ability of local governments to finance essential public services, and on economic and racial disparities. The study found tax incentives to be an ineffective way to increase regional sales tax revenue, or to produce a significant increase in quality jobs, and stated tax incentives have "not helped municipalities avoid fiscal stress [n]or had a general beneficial economic impact on the region."<sup>141</sup> The report established a causal link between the tax revenue forgone through tax abatement and the tax revenue allocated to private development as incentives with higher levels of municipal fiscal stress.<sup>142</sup> As further explained below, trickle-down economics has failed to improve local-level economies.

The trend of retail establishments folding in older developed areas, as larger retail facilities are being created further from the urban core, has had a serious impact on Puerto Rico. Older, denser, urban communities are "losing the 'mom & pop' stores that once created vibrant commercial districts,"<sup>143</sup> as retail spending

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<sup>137</sup> Michel Shuman, "Import Replacement" from *Going Local: Creating Self-Reliant Communities in a Global Age*, in SUSTAINABLE URBAN DEVELOPMENT READER 285 (2014).

<sup>138</sup> Greg LeRoy, *supra* note 136.

<sup>139</sup> *Id.* at 6 (For our analysis, we will be adopting the bifurcation used by SHORTCHANGING SMALL BUSINESS to define Large and Small Businesses. LeRoy defines Small Business as one hundred employees or less, and independently and locally owned, and with nine or fewer establishments. He defines Large Business as greater than 100 employees, or a company of any size that is not independently and locally owned, or has 10 or more establishments).

<sup>140</sup> *Id.*

<sup>141</sup> EAST-WEST GATEWAY: COUNCIL OF GOVERNMENTS, AN ASSESSMENT OF THE EFFECTIVENESS AND FISCAL IMPACTS OF THE USE OF DEVELOPMENT INCENTIVES IN THE ST. LOUIS REGION iii (2011).

<sup>142</sup> *Id.* at 27-31.

<sup>143</sup> *Id.* at 29-30.

goes to more distant parts of the metropolitan area and big-box stores. For instance, in Río Piedras, the home of the once vibrant “Paseo de Diego” one local attorney opined that until recently, this area was an up-and-coming area. Now, the majority of commercial storefronts are vacant, possibly due to people shopping more often at the Wal-Mart further outside the urban core.

Such negative economic associations have been proven more generally. The average opening of a Wal-Mart store reduces county-level employment by 150 jobs: 1.4 jobs are lost at a small businesses for every one new job provided at Wal-Mart.<sup>144</sup> What’s more, the opening of a new Wal-Mart store also has the negative impact of reducing aggregate county earnings of retail workers by 1.5 percent, and reducing their average wage rates between .5 and .9 percent.<sup>145</sup>

The St. Louis regional economic impact study describes three important impacts from this trend. First, declines in sales tax revenue can accompany losses of a community’s retail base. Second, less spending at locally owned firms likely reduces the economic multiplier effect in the region. “Third, a vibrant walkable retail district contributes to the quality of life in many communities, and the loss of this amenity should be considered as a cost.”<sup>146</sup>

By contrast, the local economic benefits from spending at small community owned businesses are clear. A study commissioned by the British Columbia division of the Canadian Union of Public Employees found that for every \$1,000,000 in sales, independent retail stores produce \$450,000 in local economic activity, compared to just \$170,000 for chain establishments. In the restaurant sector, the division becomes starker: in one locale, \$650,000 produced in local economic activity by local independent restaurants was compared with \$300,000 for chains.<sup>147</sup> Overall, independent retailers in British Columbia recirculate more than 2.6 times as much revenue in local economies as chain competitors.<sup>148</sup> Similarly, another study, in the New Orleans, Los Angeles, found that a 10 percent shift of spending from chain stores to local businesses would generate an additional \$235 million a year in local economic activity.<sup>149</sup> Other studies confirm these findings.<sup>150</sup>

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<sup>144</sup> David Neumark, et al., *The effects of Wal-Mart on local labor markets*, 63 J. URB. ECON. 405 (2008).

<sup>145</sup> ARINDRAJIT DUBE, ET AL., A DOWNWARD PUSH: THE IMPACT OF WALMART STORES ON RETAIL WAGES AND BENEFITS (2007), [http://laborcenter.berkeley.edu/pdf/2007/walmart\\_downward\\_push07.pdf](http://laborcenter.berkeley.edu/pdf/2007/walmart_downward_push07.pdf).

<sup>146</sup> EAST-WEST GATEWAY: COUNCIL OF GOVERNMENTS, *supra* note 141, at 30.

<sup>147</sup> CIVIC ECONOMICS, INDEPENDENT BC: SMALL BUSINESS AND THE BRITISH COLUMBIA ECONOMY (2013), <http://nebula.wsimg.com/31f003d5633c543438ef0a5ca8e8289f?AccessKeyId=8E410A17553441C49302&disposition=o&alloworigin=1>.

<sup>148</sup> *Id.* at 2.

<sup>149</sup> DANA ENESS & DAN HOUSTON, THINKING OUTSIDE THE BOX (2009), [https://www.independentwestand.org/wp-content/uploads/ThinkingOutsidetheBox\\_1.pdf](https://www.independentwestand.org/wp-content/uploads/ThinkingOutsidetheBox_1.pdf).

<sup>150</sup> See also INDIE IMPACT STUDY SERIES: A NATIONAL COMPARATIVE SURVEY WITH THE AMERICAN BOOKSELLERS ASSOCIATION (2012), [http://www.lvfiiba.org/Las\\_Vegas\\_Client\\_120717.pdf](http://www.lvfiiba.org/Las_Vegas_Client_120717.pdf); AMAR PATEL & GARRETT MARTIN, GOING LOCAL: QUANTIFYING THE ECONOMIC IMPACTS OF BUYING FROM LOCALLY OWNED BUSINESSES IN PORTLAND, MAINE (2011), [https://www.mecep.org/wp-content/uploads/2011/12/MECEP\\_Report\\_-\\_Buying\\_Local-12-5-2011.pdf](https://www.mecep.org/wp-content/uploads/2011/12/MECEP_Report_-_Buying_Local-12-5-2011.pdf); LOCAL WORKS: EXAMINING THE IMPACT OF

The negative impact of high import spending, and the shift from small businesses to large corporate retailers, is not lost on Puerto Rico. Puerto Rico has the highest concentration of Wal-Marts per square mile in the world, and its impact shows.<sup>151</sup> In the past, the islands have attempted to mitigate the loss of wealth that accompanies high import spending at large firm retailers.

In 2015, Puerto Rico passed a measure in the alternative minimum provisions of the islands' tax code, which provided a tax on goods and services received from a related entity from a location outside of Puerto Rico.<sup>152</sup> "The Secretary of the Treasury of Puerto Rico acknowledged that the purpose of [the measure] is to prevent multistate corporations doing business in Puerto Rico from shifting profits off the islands by purchasing goods and services from related mainland entities at artificially inflated prices."<sup>153</sup> However, the reality of economic life meant that new tax provision would only apply to the biggest employer and generator of sales tax on the islands, Wal-Mart.<sup>154</sup> Unfortunately, in 2016, the First Circuit Federal Court invalidated the measure, using the dormant commerce clause.<sup>155</sup> This left the islands' effort to address its dire fiscal situation void, and unable to rectify inequities in paying for essential government services.<sup>156</sup>

Economic statistics further indicate there is much room to facilitate small businesses growth in Puerto Rico. Nationally in the United States, small businesses employed 48 percent of the private workforce in 2013.<sup>157</sup> By contrast, in Puerto Rico, small and midsize businesses, *combined*, currently only employ about one-third of the islands' workforce.<sup>158</sup> This indicates that the export-driven economic development model practiced in Puerto Rico has hindered small business

LOCAL BUSINESS ON THE WEST MICHIGAN ECONOMY (2008), [http://caiba.camp8.org/Resources/Documents/GR %20Local %20Works %20Complete\[1\].pdf](http://caiba.camp8.org/Resources/Documents/GR%20Local%20Works%20Complete[1].pdf); THE SAN FRANCISCO RETAIL DIVERSITY STUDY, (2007), <https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/paper-civic.pdf>; THE ECONOMIC IMPACT OF LOCALLY OWNED BUSINESSES VS. CHAINS: A CASE STUDY IN MIDCOAST MAINE (2003), <https://ilsr.org/wp-content/uploads/files/midcoaststudy.pdf>.

<sup>151</sup> Joel Cintrón Arbasetti, *Puerto Rico first in the world with Walgreens and Walmart per square mile*, CENTRO DE PERIODISMO INVESTIGATIVO, (May 7, 2014), <http://periodismoinvestigativo.com/2014/05/puerto-rico-first-in-the-world-with-walgreens-and-walmart-per-square-mile>.

<sup>152</sup> 13 LPRA § 30073(b)(2).

<sup>153</sup> VICTOR R. RODRIGUEZ & HECTOR BERNIER, PUERTO RICO- ALTERNATIVE MINIMUM TAX MEASURED BY GOODS AND SERVICES RECEIVED FROM OUTSIDE PUERTO RICO INVALIDATED AS VIOLATING THE DORMANT COMMERCE CLAUSE (2016), <https://www.pwc.com/us/en/state-local-tax/newsletters/salt-insights/assets/pwc-puerto-rico-amt-invalidated-as-violating-the-commerce-clause.pdf>.

<sup>154</sup> Kelly Phillips Erb, *Walmart Gets Big Win Over Puerto Rico: No More 'Walmart Tax'*, FORBES, (Mar. 28, 2016), <https://www.forbes.com/sites/kellyphillipserb/2016/03/28/walmart-gets-big-win-over-puerto-rico-no-more-walmart-tax/#5b4a23636d3c>.

<sup>155</sup> Wal-Mart Puerto Rico, Inc. v. Zaragoza-Gomez, 834 F.3d 110 (1st Cir. 2016).

<sup>156</sup> Phillips Erb, *supra* note 154.

<sup>157</sup> SMALL BUSINESS PROFILE, U.S. SMALL BUSINESS ADMINISTRATION: OFFICE OF ADVOCACY (2016) [https://www.sba.gov/sites/default/files/advocacy/United\\_States.pdf](https://www.sba.gov/sites/default/files/advocacy/United_States.pdf).

<sup>158</sup> Nick Leiber, *Puerto Rico's Slow Hurricane Recovery is Suffocating Small Business*, BLOOMBERG BUSINESSWEEK (2017), <https://www.bloomberg.com/news/articles/2017-12-07/puerto-rico-s-slow-hurricane-recovery-is-suffocating-small-business>.

on the islands, and contributes to the islands' current economic misfortunes.<sup>159</sup> Focusing on growing community businesses contributes to the economic, social, and civic capacity necessary for Puerto Rico's economic revitalization. Beyond growing the tax base and working toward mitigation of the islands' nearly 46 percent poverty rate,<sup>160</sup> community economic development also goes toward building increased political engagement and power. "[B]uilding wealth through the development of community businesses . . . in turn, encourages people to participate in their own development and to become more active in their community affairs."<sup>161</sup>

### B. *The Benefits of Community Economic Development*

Both in terms of economic preferences, and in responding to economic or environmental shocks, localized businesses are the most sensitive to the needs of their community.<sup>162</sup> Concentrating efforts on community-based small business can compound positive impact, and generate a cycle of economic sustainability.

"As businesses develop that are tailored to the needs of a particular community, new businesses are created to support existing businesses, thereby generating a positive growth cycle."<sup>163</sup> Additionally, community businesses often play a central role in disaster relief. For instance, Farmacia Gloriana in Quebradillas, Puerto Rico, served as a hub for Ayuda Legal Huracán María, as the owner graciously opened his space for the non-profit organization. Community businesses are some of the first to respond in terms of post-disaster aid. Local business knowledge can be vital in coordinating with emergency management officials to get "what's needed, where it's needed, and how it's needed."<sup>164</sup> This ensures efficiency and accuracy in the delivery of relief efforts, and a head start in recovery.

The same efforts that achieve economic revitalization can simultaneously create institutions that work for the social and political betterment of the neighborhood, as a whole.<sup>165</sup> Strong community-based businesses and institutions can become local repositories of knowledge and power.<sup>166</sup> "More than financial capital,

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<sup>159</sup> See HON. MANUEL A. LABOY RIVERA, INTEGRATED ECONOMIC DEVELOPMENT (2017), <http://www.pridco.com/Documents/PlanDesarrolloIntegradoEn.pdf>.

<sup>160</sup> Richard V. Reeves & Katherine Guyot, *Keeping our Promesa: What the U.S. can do about Puerto Rico's fiscal crisis*, BROOKINGS (September 11, 2017), <https://www.brookings.edu/research/keeping-our-promesa-what-the-u-s-can-do-about-puerto-ricos-fiscal-crisis>.

<sup>161</sup> Laurie Hauber, *Promoting Economic Justice Through Transactional Community-Centered Lawyering*, 27 ST. LOUIS U. PUB. L. REV. 3, 14 (2007).

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *The Mutual Benefits of Business Continuity & Community Resilience*, INSURANCE INSTITUTE FOR BUSINESS & HOME SAFETY, <https://disastersafety.org/ibhs/the-mutual-benefits-of-business-continuity-community-resilience> (last visited May 15, 2018).

<sup>165</sup> Michael Diamond, *Community Economic Development: A Reflection on Community, Power and the Law*, 8 J. SMALL & EMERGING BUS. L. 151-71, 165 (2004).

<sup>166</sup> Hauber, *supra* note 161, at 16.

[these entrepreneurs] need the human capital (skills, attitudes, and values) and the social capital (networks of trust relationships, family support, and mentoring) that undergird successful business activity.”<sup>167</sup> The network of trust precipitated out of community growth in human and social capital provides quick and effective means of gaining accurate information in a community. Thus, the establishment of community-based businesses and institutions that can serve as hubs, and support the existing social and human capital, is vital to establishing greater resiliency.

As experts suggest, “[e]xpansion of economic activity should be targeted carefully at those people, institutions, and businesses that have a long-term commitment to the community.”<sup>168</sup> Economic justice through community economic development that focus on inclusive growth will be more sustainable.<sup>169</sup> Therefore, measures to bolster human and social capital accompany efforts should grow community-based businesses.<sup>170</sup> Reducing barriers to economic opportunity can enhance economic growth; building capacity in community and municipal organizations that support human and social capital, “can maximize the talent and entrepreneur bases on which their growth and productivity depend.”<sup>171</sup>

Additionally, community business development “leads to political engagement and power at both the individual and community levels. The acquisition of power enables individuals and communities to take more control over their lives and gives them the ability to challenge institutional structures that perpetuate . . . causes of poverty.”<sup>172</sup> Community ownership helps residents achieve greater agency over their communities and increases participation in politics and decision

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<sup>167</sup> Robert E. Suggs, *Bringing Small Business Development to Urban Neighborhoods*, 30 HARV. C.R.-C.L. L. REV. 487, 489 (1995). The article also adds:

The term ‘human capital,’ in the context of entrepreneurship, refers to the accumulated self-investment made by a business owner to gain the skills, knowledge and experiences necessary to operate a successful business. “Social Capital,” as used in this Article, refers to the *relationships of trust* acquired and developed over time that provide access to and credibility with suppliers of credit, equipment, space, labor, and other resources. . . . The more that people use trust in the course of business and social interactions, the stronger such trust becomes and the more social capital is created.

*Id.* at 489-90.

<sup>168</sup> Shuman, *supra* note 137, at 288.

<sup>169</sup> *Id.*

<sup>170</sup> Diamond, *supra* note 165.

<sup>171</sup> JOSEPH PARILLA, OPPORTUNITY FOR GROWTH: HOW REDUCING BARRIERS TO ECONOMIC INCLUSION CAN BENEFIT WORKERS, FIRMS, AND LOCAL ECONOMIES 2 (2017), [https://www.brookings.edu/wp-content/uploads/2017/09/metro\\_20170927\\_opportunity-for-growth-iedl-report-parilla-final.pdf](https://www.brookings.edu/wp-content/uploads/2017/09/metro_20170927_opportunity-for-growth-iedl-report-parilla-final.pdf).

<sup>172</sup> Hauber, *supra* note 161, at 9.

making.<sup>173</sup> At its core, community ownership keeps the interests of those that comprise the community in direct focus.<sup>174</sup>

Import substitution on the community level, discussed later on, facilitates the diversification of the local economy and the accumulation of its own capital, skills, and experience.<sup>175</sup> Through the support of community-based business and the creation of localized economic wealth, Puerto Rico can revitalize itself from within, and in the process, regain political agency that has deteriorated on the islands.

### C. *The Benefits of Localization*

Small, community level businesses produce better individual and community economic outcomes. Economic sectors that are consolidated into a few large firms reduce the overall amount of local economic activity and exacerbate inequality. Localization is seen as a method to develop “an ‘alternative trajectory’ to . . . economic globalization,”<sup>176</sup> and mitigate its worst impacts. Localization works through import substitution, which seeks to move spending on the most vital economic goods to local sources, increasing resiliency and local economic activity. Necessary economic goods are the best place to start replacing imports by increasing resiliency to shocks, increasing the local economic multiplier, and retaining more wealth in the local economy, thereby increasing individual economic wealth.

Community economic development that focuses on the localization of necessary goods will make communities more self-sufficient. Most communities in the United States are not self-reliant, as they require energy resources and food to be imported, with the typical food item traveling 1,300 miles before it is consumed, etc.<sup>177</sup>

Increase in firm size and firm consolidation has been associated with rising levels of inequality. Using data from 1981 to 2010 on wages and the size of firms in fifteen countries, the study found a strong relationship between growth in the average firm size and rising levels of income inequality, particularly in the United States and United Kingdom.<sup>178</sup>

Import replacement does not translate to economic isolationism. Despite critics who contend that import substitution deprives a community of the benefits of trade, narrows the range of goods and services available, and lowers the rate of

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<sup>173</sup> Megan Hafner & Elizabeth Ramaccia, *What Does It Look Like for a Community to Own Its Future?*, NON-PROFIT QUARTERLY, (January 5, 2018), <https://nonprofitquarterly.org/2018/01/05/look-like-community-future>.

<sup>174</sup> SKYE HART & SAM MAGAVERN, PUSH BUFFALO'S GREEN DEVELOPMENT ZONE: A MODEL FOR NEW ECONOMY COMMUNITY DEVELOPMENT (2017), [https://ppgbuffalo.org/files/documents/push\\_buffalo\\_27s\\_green\\_development\\_zone.pdf](https://ppgbuffalo.org/files/documents/push_buffalo_27s_green_development_zone.pdf).

<sup>175</sup> Shuman, *supra* note 137, at 290.

<sup>176</sup> Eva Frankova & Nadia Johannisova, *Economic Localization Revisited*, 22 ENV. POL. GOV. 318 (2012).

<sup>177</sup> Shuman, *supra* note 137, at 286-87.

<sup>178</sup> HOLGER M. MUELLER ET AL., WAGE INEQUALITY AND FIRM GROWTH (2015), <http://www.nber.org/papers/w20876.pdf>.

innovation within communities, data show otherwise.<sup>179</sup> The goal of import substitution is to move the most important and valuable types of production locally, “not to unplug completely from the national or international economy.”<sup>180</sup>

Dependency on imports for necessities reduces resiliency, and “means that a remote crisis can reverberate into a local one.”<sup>181</sup> “A dependent community also loses [the opportunity to retain] the economic benefits of producing necessities for itself.”<sup>182</sup> “A community that chooses not to generate its own electricity, not to grow its own food . . . winds up losing the jobs and income that might have come from these commercial ventures.”<sup>183</sup> Finally, the economic multiplier enjoyed from money spent within a community is weakened as more activities within the community are exported.<sup>184</sup>

Localization of the most vital economic sectors will increase resiliency to shocks. Generally, the concept of localization, is a strategy that builds societies on the local production of food, energy, and goods alongside the development of better governance and community culture, a truly comprehensive mode of economic development.<sup>185</sup> The focus on necessary economic goods ensures both an existing market, and readily basic essentials are available.

Necessary economic goods must, of course, be defined. Using Article twenty-five of the Universal Declaration of Human Rights as a proxy, Shuman considers sectors like food, energy, clothing, housing, medical care, and necessary social services to have the highest potential for localization.<sup>186</sup> Because import substitution can be direct or indirect, this definition can be expanded.

As the variety of goods and services produced locally expands, the richer commercial economy attracts and holds more of the residents’ dollars. Local dollars that would have otherwise flowed out of the community to purchase things that would add variety and quality to the residents’ lives, stay in the community to purchase local services. Live theater and music, instruction in skills, recreational facilities, and so on attract and hold dollars that otherwise would have flowed out to finance imports.<sup>187</sup>

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**179** Michael Shuman, “Import Replacement” from *Going Local: Creating Self-Reliant Communities in a Global Age*, in SUSTAINABLE URBAN DEVELOPMENT READER 287 (Stephen M. Wheeler & Timothy Beatley eds., 2004).

**180** *Id.*

**181** *Id.* at 286.

**182** *Id.* at 287.

**183** *Id.*

**184** *Id.*

**185** Michel Bauwens, *The Economic Benefits of Localization*, P2P FOUNDATION (January 7, 2009), <https://blog.p2pfoundation.net/the-economic-benefits-of-localization/2009/01/07>.

**186** Shuman, *supra* note 179, at 286.

**187** THOMAS MICHAEL POWER, ECONOMIC DEVELOPMENT AND ENVIRONMENTAL PROTECTION: ECONOMIC PURSUIT OF QUALITY 194 (2nd ed. 1996).



Other key domains include affordable and green construction, local agriculture production, a shift to locally produced renewable and distributed energy generation, community governance, and capacity building.<sup>188</sup> All expert localization strategies not only focus on producing goods locally but acknowledge the importance of comprehensively building the capacity and necessary ecosystem within communities to sustain these endeavors.

The goal of import replacement is to retain wealth within a regional economy, and to expand the quantity and quality of jobs for locals, while supporting efforts to ensure the capacity of the community to continue sustaining its economic growth.<sup>189</sup> These community-based firms keep more wealth in an economy, and generate a higher local economic multiplier effect than non-local firms.<sup>190</sup> The focus on human and social capital, and community capacity will have the impact of sustaining these businesses, thereby building self-sufficiency and resiliency. Furthermore, by focusing on those with the greatest stake in the future of Puerto Rico, the Commonwealth will ensure its investment has the highest level of efficacy.<sup>191</sup> Any resulting increase in individual wealth, in turn, will produce greater autonomy for all Puerto Ricans.

## V. COMMUNITY ECONOMIC DEVELOPMENT SUCCESSES IN AGRICULTURE AND ENERGY SECTORS

Food and energy are essential. Building on discussions of necessary economic goods, the agriculture and energy sectors should be a focus of community economic development efforts in Puerto Rico. This section of the paper will discuss possible solutions and programs to bolster the capacity of the islands to sustain locally produced food and renewable energy. It offers recommendations on how law and policy can be altered to further community economic development and localization, as applied to both sectors. As essential goods, in conjunction with Puerto Rico's enormous natural capacity to support these industries, they can serve to catalyze the types of change that will allow community economic development to evolve into a fundamental part of the Puerto Rican economy.

### A. *New Seeds for Puerto Rico's Agriculture Sector*

With a rich tradition of growing food, Puerto Rico has enormous potential to localize food production. However, during the 20<sup>th</sup> century, ill-conceived economic practices and mainland firms squandered the ability of the islands to grow its own food. Despite this, in the years leading up to Hurricane Maria, Puerto

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<sup>188</sup> Bauwens, *supra* note 185.

<sup>189</sup> Shuman, *supra* note 179, at 286-87.

<sup>190</sup> Bauwens, *supra* note 185.

<sup>191</sup> See Shuman, *supra* note 179.

Rico's agriculture sector was experiencing renewed growth.<sup>192</sup> While Hurricane Maria was a significant setback to this new growth, the potential for agricultural revitalization remains ripe.

i. Agriculture in Puerto Rico

As noted, firm consolidation produces downward pressure on wages, and works to reduce the aggregate number of jobs.<sup>193</sup> The modern agricultural system is able to produce plentiful cheap food due to relentless consolidation and concentration. "Four companies slaughter 81 percent of American beef."<sup>194</sup> Two companies control 75 percent of global grain trade.<sup>195</sup> Due to this consolidation rampant in the agriculture sector, there has been dramatic reductions in the number of farmers and farm jobs.<sup>196</sup>

The past collapse of Puerto Rico's agriculture industry can be attributed to the same consolidation trend. Throughout the islands' colonial history, and well into the 20<sup>th</sup> century, Puerto Rico's economy was centered on agriculture.<sup>197</sup> Although one would be hard-pressed to find evidence of this on the islands today, Puerto Rico produced most of the food it consumed and was a leading exporter of unrefined sugar, coffee beans, and tobacco.

However, "[t]he unequal development of the Puerto Rican economy during the 20<sup>th</sup> century, ill-conceived economic policies, and the transformation of Puerto Rico from an agricultural to an industrial society brought down agricultural production [to its near insignificant status today]."<sup>198</sup>

Throughout this period, the majority of agricultural production was owned and operated by either a slave-holding class, or a corporate baron class, and little of the wealth was distributed with any equity.<sup>199</sup> In the mid twentieth century, agricultural commodification and economic advances elsewhere further limited Puerto Rico to competitively export its crops.<sup>200</sup> Finally, under Operation Bootstrap, the federal government provided tax incentives for industrial manufacturers

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<sup>192</sup> Kate Yoder, *Hurricane Maria crushed Puerto Rico farms. This Activist wants to grow resilience through good*, GRIST (Oct. 24, 2017), <https://grist.org/article/hurricane-maria-crushed-puerto-rico-farms-this-activist-wants-to-grow-resilience-through-food>.

<sup>193</sup> HOLGER M. MULLER *ET AL.*, *supra* note 178.

<sup>194</sup> BILL MCKIBBEN, *DEEP ECONOMY: THE WEALTH OF COMMUNITIES AND THE DURABLE FUTURE* 52 (2007).

<sup>195</sup> *Id.*

<sup>196</sup> *Id.* at 52-55.

<sup>197</sup> SERAFÍN MÉNDEZ-MÉNDEZ & RONALD FERNÁNDEZ, *PUERTO RICO PAST AND PRESENT: AN ENCYCLOPEDIA* 12 (2nd ed. 2015).

<sup>198</sup> *Id.*

<sup>199</sup> *See id.*; DENIS, *supra* note 21.

<sup>200</sup> JORGE DUANY, *PUERTO RICO: WHAT EVERYONE NEEDS TO KNOW* 1-71 (2017).

to locate on the islands, which finally cemented the obsolescence of agriculture in Puerto Rico.<sup>201</sup>

Before Hurricane Maria, Puerto Rico's agriculture sector was in a state of revival.<sup>202</sup> Farming was growing for the first time in a century, with a resulting increase of agricultural jobs by 50 percent.<sup>203</sup> *Agrohack* is a conference that focuses on regrowing the agriculture sector through innovation. "Agriculture has the potential of becoming a key pillar of any country's economy through innovation and technology by applying an entrepreneurship mindset to . . . agriculture."<sup>204</sup>

Unfortunately, Hurricane Maria reset the progress made in providing Puerto Ricans with homegrown, readily available food. The hurricane decimated about 80 percent of the crop value in Puerto Rico.<sup>205</sup> Despite the growth of the agriculture sector, pre-Maria Puerto Rico still imported about 85 percent of its food.<sup>206</sup> After the Hurricane, some estimates put the import number at nearly 100 percent.<sup>207</sup> José A. Rivera, a Puerto Rican farmer speaking shortly after the hurricane, said to the New York Times:

There will be no food in Puerto Rico, . . . There is no more agriculture in Puerto Rico. And there won't be any for a year or longer. . . . Sometimes when there are shortages, the price of plantain goes up from \$1 to \$1.25. This time there won't be any price increase; there won't be any product, . . . [Mr. Rivera] noted that other islands that export food to Puerto Rico...were also hit, and that the food supply could be even more precarious if the island's other suppliers were also affected.<sup>208</sup>

Puerto Rico's agriculture sector is primed for revitalization, localization, and to provide substitutions for some of the islands' food imports. Puerto Rico's agricultural sector comprises less than 1 percent of the economy, which renders them dependent on imports for more than 85 percent of its nutritional needs. Shifting just 10 percent of that spending to locally grown food will boost local economic activity significantly.<sup>209</sup> As an essential economic good, establishing capacity to grow and sustain the agriculture sector will ensure more resiliency in the face of future shocks.

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201 *Id.* at 69.

202 Kate Yoder, *supra* note 192.

203 *Id.*

204 AGROHACK, <http://agrohackcon.com> (last visited May 15, 2018).

205 Frances Robles & Luis Ferré-Sadurní, *Puerto Rico's Agriculture and Farmers Decimated by Maria*, N.Y. TIMES (Sept. 24, 2017), <https://www.nytimes.com/2017/09/24/us/puerto-rico-hurricane-maria-agriculture-.html?mtrref=www.google.com&login=email>.

206 *Id.*

207 Conversation with Tara Rodríguez Besosa on January 27, 2018 in San Juan, PR.

208 Robles & Ferré-Sadurní, *supra* note 205.

209 ENNESS & HOUSTON, *supra* note 149.

## ii. Two Wings of a Bird: Lessons from Cuba's Food Model

As, "*Cuba y Puerto Rico son de un pájaro las dos alas*," Cuba's food model has many important lessons from which Puerto Rico can learn.<sup>210</sup> When the Soviet Union collapsed, Cuba lost its primary market for its commodified agriculture sector.<sup>211</sup> Consequently, Cuba faced serious food shortages and a collapse of more than 30 percent of the islands' GDP. Left with little choice, Cubans were forced to develop a new, more sustainable and resilient way to ensure their food security. To respond to this crisis, the Cuban authorities adopted incentives to expand the agriculture sector; measures that would become a leader in sustainable agriculture, and a model for other countries to follow.<sup>212</sup>

The beginning of Cuba's food revolution was born out of necessity. Faced with serious supply shortages, urban dwellers in Cuba began to grow their food, in backyards, balconies, and roofs.<sup>213</sup> Similarly, rural farmers, with no supply of fuel or pesticides, were forced to revive traditionally sustainable methods of agriculture production.<sup>214</sup>

The Cuban government soon responded to this grassroots revitalization movement. Understanding the potential of its citizen's ingenuity, the government started supporting and encouraging the movement through a number of measures, primarily focused on decentralization and incentives.<sup>215</sup> "[I]t shifted towards a decentralized production model . . . . The reorganization of agricultural production consisted mainly in converting the large state farms into smaller, more efficient, cooperative farms and distributing land in usufruct to small producers."<sup>216</sup>

The overarching intent of the Cuban government's role in supporting the revitalized agriculture movement was to improve agriculture production, and reduce food imports to the country as much as possible.<sup>217</sup> To do so, the government helped build capacity on the individual and community level by organizing composting, local use of resources, and organic plant protection. In 2008, Law Decree 259, distributed unproductive parcels in usufruct to Cuban citizens to be used for

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<sup>210</sup> Lola Rodríguez de Tió, *Cuba y Puerto Rico son de un pájaro las dos alas*. "*Cuba y Puerto Rico son de un pájaro las dos alas*," translates to Cuba and Puerto Rico are two wings of the same bird (translation by author).

<sup>211</sup> Debra Iozzi, *Cuba, a Model of Sustainable Agriculture Towards Global Food Security*, COUNCIL ON HEMISPHERIC AFFAIRS (Dec. 12, 2016), <http://www.coha.org/cuba-a-model-of-sustainable-agriculture-towards-global-food-security>.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

agriculture. Law Decree 300 subsequently built additional agriculture infrastructure on lands given in usufruct. Finally, Cuba “started to work on creating additional commercial possibilities for farmers, providing training and access to agricultural inputs.”<sup>218</sup>

The Cuban government’s robust role has led the island to become one of the most sustainable development models on the planet.<sup>219</sup> Occupying similar geography and climate, despite differing governmental structures, Cuba’s experience shows it is possible to revitalize an economy and build resilience through agriculture. Puerto Rico can learn many valuable lessons from their success.

### iii. The City that Beat Hunger: Belo Horizonte, Brazil

Since 1993, the Brazilian city of Belo Horizonte has proven with its exemplary Food Security System of twenty interconnected programmes, that the Human Right to sufficient and healthy food can be successfully transformed into a reality. All it requires is strong political will and 2 percent of the city’s annual budget. It has eliminated hunger and malnutrition from the city, whilst at the same time boosted the local economy and livelihoods of small-scale agricultural holdings in the region.<sup>220</sup>

The Belo Horizonte food model shows that the legal application of the right to food can address food insecurity and its related causes.<sup>221</sup> At the inception of the city’s efforts, nearly 11 percent of the city’s 2.5 million residents lived in absolute poverty, with almost 20 percent of its children going hungry.<sup>222</sup> Through municipal law, the city created a framework for food sovereignty and included food security as a right for the city’s citizens.<sup>223</sup> The city made a commitment to the right of people to define their own agricultural and food policies, better oversee their production and trade, ensure sustainable development, achieve a higher degree of autonomy, and to eliminate dumping on their markets.<sup>224</sup>

The success of their model lies in the comprehensive nature of their policies, linking the interests of farmers and consumers, and bridging gaps between the

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<sup>218</sup> *Id.*

<sup>219</sup> *As World Burns, Cuba Number 1 for Sustainable Development: WWF*, TELESUR (Oct. 27, 2016), <https://www.telesurtv.net/english/news/As-World-Burns-Cuba-Number-1-For-Sustainable-Development-WWF-20161027-0018.html>.

<sup>220</sup> *Belo Horizonte’s Food Security Policy*, FUTURE POLICY (Mar. 31, 2018), <http://www.futurepolicy.org/food-and-water/belo-horizontes-food-security-policy>.

<sup>221</sup> Maria Gerster-Bentaya *et al.*, *The Food Security System of Belo Horizonte – a model for Cape Town?*, WORLD FUTURE COUNCIL (2011), [https://www.worldfuturecouncil.org/file/2016/01/2009\\_Feasibility\\_Study\\_Cape\\_Town.pdf](https://www.worldfuturecouncil.org/file/2016/01/2009_Feasibility_Study_Cape_Town.pdf).

<sup>222</sup> *Belo Horizonte’s Food Security Policy*, *supra* note 220.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

public and private sectors.<sup>225</sup> The city focuses on six areas: subsidized food sales, food and nutrition assistance, supply and regulation of food markets, support to urban agriculture, education for food consumption, and job and income creation. In doing so, the city created the Secretariat for Food Policy and Supply, a public body that included government representatives, labor unions, food producers and distributors, and others who helped to design the municipality's strategy.<sup>226</sup> The city went as far as involving citizens in participatory budgeting, which gave residents direct control over resource allocation.<sup>227</sup>

Under Belo Horizonte's model, "people were viewed as citizens rather than consumers and food insecurity as a market failure requiring government intervention."<sup>228</sup> Like Belo Horizonte, Puerto Rico has a very high poverty rate, as well as many residents who depend on food assistance programs.<sup>229</sup> Replicating elements of Belo Horizonte's food system would help boost the local economy, while alleviating some of the worst impacts of poverty.

#### iv. The Role of the Law in Facilitating the Localization of Puerto Rican Agriculture

Both commonwealth and local municipal governments must play important roles in facilitating the regrowth and localization of the agriculture sector in Puerto Rico. The role of government is key, and provides the foundation for community human and social capital, as well as reducing barriers of entry to economic opportunity. Systems that localize food are becoming, "not only cost-effective – in both rural and urban areas – but also essential to preserve the genetic integrity of the world's edible plants."<sup>230</sup> Luckily for Puerto Rico, one of the international thought leaders around the revitalization of local and sustainable farms is aiming to do all this and more in her home territory.

Tara Rodríguez Besosa is currently working to establish 200 new small-scale farm projects throughout Puerto Rico in the next two years.<sup>231</sup> Previously, Rodríguez Besosa had opened *El Departamento de la Comida*, a community supported

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<sup>225</sup> Frances Moore Lappe, *The City that Ended Hunger*, YES MAGAZINE (Feb. 13, 2009), <http://www.yesmagazine.org/issues/food-for-everyone/the-city-that-ended-hunger>; Belo Horizonte: Home for a Functional and Fair Food System, *Belo's Food System: A History*, TUFTS UNIVERSITY, <https://sites.tufts.edu/belohorizonte/belos-food-system-history>.

<sup>226</sup> *Id.*

<sup>227</sup> Moore Lappe, *supra* note 225.

<sup>228</sup> *Belo Horizonte's Food Security Policy*, *supra* note 225.

<sup>229</sup> Elizabeth Wolkomir, *How is Food Assistance Different in Puerto Rico than the Rest of the United States?*, CENTER ON BUDGET AND POLICY PRIORITIES (Nov. 27, 2017), [https://www.cbpp.org/research/food-assistance/how-is-food-assistance-different-in-puerto-rico-than-in-the-rest-of-the#\\_ftn2](https://www.cbpp.org/research/food-assistance/how-is-food-assistance-different-in-puerto-rico-than-in-the-rest-of-the#_ftn2).

<sup>230</sup> Shuman, *supra* note 179.

<sup>231</sup> Lilia Luciano, "Puerto Rico Rises: Food", AMERICAN BROADCASTING CORPORATION (Jan. 30, 2018), <https://www.abci.com/article/news/investigations/puerto-rico-rises-food/103-503091301>.

food hub. Later, this food hub morphed into a restaurant hybrid, and was the *only* fully locally sourced and sustainable restaurant in Puerto Rico. Unfortunately, Hurricane Maria took all that away.<sup>232</sup> Now, Rodriguez Besosa is back to her roots, working again to reestablish the food hub, and to set up those new local sustainable farm projects.<sup>233</sup> Rodriguez Besosa is also the director of the Resiliency Fund in Puerto Rico.<sup>234</sup> The fund describes its goal as:

[T]o power the restoration and the establishment of local sustainable food systems and reforestation of decimated forests; incubate authentic civic engagement through mobilization of “solidarity brigades” (small groups mobilized for the cleaning phase, planting phase, and overall education of farmers communities on sustainable practices); mobilize Promotores Verdes from multiple organizations as part of the brigades and the envisioning of restoration efforts past 24 months; create self sustaining farms that are autonomous and efficient with irrigation systems, including rainwater collection techniques & clean solar energy; chronicle and document the relief and rebuild efforts to use as a model of resilient communities’ ability to rebuild in the face of climate change destruction.<sup>235</sup>

The Resilience Fund’s efforts incorporate many of the best ideas of community economic development, and reflect its comprehensive nature. Puerto Rico is fortunate to have private actors working toward such a community oriented goal. The group’s efforts have been successful thus far, despite working in a regulatory environment that is far from ideal for local, sustainable farms.

In order to support Puerto Rico’s burgeoning food movement, the role of the law and government should focus on four main areas. First, food aggregation, processing and distribution; second, local food procurement policies; third, incentives for consumers to buy local, healthy food, and; fourth, the promotion of food production. While these programs and policies each have a particular focus, they mutually reinforce each other and have considerable goal overlap with other policies.

#### v. Food Aggregation, Processing and Distribution

The importance of robust food aggregation, processing, and distribution systems cannot be understated, as this is a primary method of lowering the economic cost of entry into the local agriculture market. Aggregation, processing, and distribution all have policy, regulatory, programmatic, and funding implications. These steps are vital in getting local farmers’ food to market by “filling gaps in the current food distribution system to meet demand for local, sustainably produced

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<sup>232</sup> *Id.* at 289.

<sup>233</sup> Food projects, includes new farms, reforestation efforts, supply line establishment, and more broadly as farm infrastructure, like rain catchment units, irrigation, and education.

<sup>234</sup> *Puerto Rico Resilience Fund*, AMERICAS FOR CONSERVATION AND THE ARTS, <http://www.americasforconservation.org/lasolidaria> (last visit June 15, 2018).

<sup>235</sup> *Id.*

products and better allowing local producers to meet the rapidly changing demands of local food markets.”<sup>236</sup>

Regulatory and community supported aggregation, processing, and distribution gives access to “larger and more diverse markets . . . enabling increased *import substitution*.”<sup>237</sup> This often starts with government-commissioned studies that assess the current context in reestablishing local food production. Other methods might include facilitating technical assistance, public finances, and streamlined permitting processes (especially around organic or bonafide status for crops).<sup>238</sup> North Dakota tried another approach, where lawmakers passed Senate Bill 2386, giving a state income tax credit of up to \$6000 annually for people who invest in agricultural processing cooperatives. The tax credit is for 30 percent of the total amount invested, up to \$20,000.<sup>239</sup>

One pervasive problem in access to healthy local food is the processes for certifying products for direct retail in supermarkets. In Puerto Rico, farmers have trouble attaining the status of “bonafide” for their crops.<sup>240</sup> While this can be seen as a food distribution issue, it also is a food access issue because it constrains the supply available to consumers. Modifying these regulations can make it easier and less expensive for farmers to get their crop to market. Other communities have explored methods to address this issue. For instance:

In Minneapolis, the Mini-Market Project & Ordinance (2011-Or-095) amended the city’s Food Code to make it more flexible and streamlined for smaller farmers markets. The code introduced the concept of a ‘mini-market,’ or Local Produce Market, to streamline permitting and eliminate business license requirements for smaller farmer’s markets with five or fewer farmers selling their own produce in low-income neighborhoods.<sup>241</sup>

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<sup>236</sup> *Food Aggregation, Processing, and Distribution: The Local Government’s Role in Supporting Food System Infrastructure for Fruits and Vegetables*, GROWING FOOD CONNECTIONS 2 (2016), <https://planning-org-uploaded-media.s3.amazonaws.com/document/Food-Infrastructure-Planning-Policy-Brief.pdf>.

<sup>237</sup> *Id.* (emphasis added).

<sup>238</sup> *Id.*

<sup>239</sup> Stacy Mitchell, *Public Banks: Bank of North Dakota*, INSTITUTE FOR LOCAL SELF RELIANCE (July 2, 2015), <https://ilsr.org/rule/bank-of-north-dakota-2>.

<sup>240</sup> Conversation with Luis E. Santiago Acevedo, and Maritza Barreto-Orta Ph. D., Professors, University of Puerto Rico School of Planning (Jan. 24, 2018). This interview revealed that obtaining bonafide status for crops was one of the most significant barriers of entry for local producers into the local agriculture market.

<sup>241</sup> INCENTIVIZING THE SALE OF HEALTHY AND LOCAL FOOD: THE LOCAL GOVERNMENT’S ROLE IN PROMOTING ACCESS TO AND PURCHASE OF GOOD FOOD, GROWING FOOD CONNECTIONS 5-6 (2017), [http://growingfoodconnections.org/wp-content/uploads/sites/3/2015/11/GFCHealthyFoodIncentivesPlanningPolicyBrief\\_2016Feb-1.pdf](http://growingfoodconnections.org/wp-content/uploads/sites/3/2015/11/GFCHealthyFoodIncentivesPlanningPolicyBrief_2016Feb-1.pdf).



By supporting food infrastructure for aggregation, processing, and distribution, communities will also be providing important space and equipment for entrepreneurs to create new food-based businesses.<sup>242</sup> Tax incentives and regulatory streamlining may be an easy way for governments to support food infrastructure.

vi. Food Procurement

Governments can also use their market power and strategic laws to bolster demand for locally produced food. These policies affect what type of food is being purchased, provided, or made available by public agencies, and they often help improve healthy food's availability. "A local, healthy food procurement policy can set basic geographical and nutritional standards for food that is offered to residents by government agencies."<sup>243</sup> Successful procurement policies range from simple low-commitment pilot projects that assesses local food sourcing needs, to robust programs that establish requirements and programmatic support to build infrastructure and capacity for policy success.

Multiple communities have passed ordinances, resolutions, and other laws that have successfully worked to grow and sustain localized agriculture. For example, Woodbury County, Iowa, adopted a resolution that required county departments that serve food in the course of regular business, such as the county jail, work release center, and other facilities, to purchase locally produced organic food, or when not available, locally produced nonorganic food.<sup>244</sup> In Cleveland, Ohio, the Cleveland-Cuyahoga County Food Policy Coalition worked with the city council and the mayor's office to pass a local ordinance that established a preference for local food production by providing a 2 percent bid discount on all applicable city contracts to businesses that are sustainable, locally-based, or purchase 20 percent of their food locally.<sup>245</sup> Alternatively, the Good Food Bag program in Seattle directed childcare and senior meal sites to use their bulk purchasing power to set up mini-Community Supported Agriculture hubs, and connect consumers to local food. Los Angeles Mayor, Antonio Villaraigosa, implemented a resolution that required all city departments to adopt the Good Food Purchasing Pledge, which set five food procurement guidelines for local governments and agencies.

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<sup>242</sup> *Food Aggregation*, *supra* note 236.

<sup>243</sup> LOCAL, HEALTHY FOOD PROCUREMENT POLICIES: DRIVING DEMAND FOR, AND IMPROVING THE AVAILABILITY OF LOCAL, HEALTHY FOODS, GROWING FOOD CONNECTIONS 1 (2017), [http://growingfoodconnections.org/wp-content/uploads/sites/3/2015/11/FINAL\\_GFCFoodProcurementPoliciesBrief-1.pdf](http://growingfoodconnections.org/wp-content/uploads/sites/3/2015/11/FINAL_GFCFoodProcurementPoliciesBrief-1.pdf).

<sup>244</sup> *Id.* at 1-2. It should be noted that this policy did not sustain itself over the long term. One missing element was a sufficient feasibility study that ensured enough infrastructure was present to meet the demands of the new law.

<sup>245</sup> *Id.* at 2.

## vii. Incentivizing the Sale of Healthy and Local Food

Ensuring that all residents, regardless of their income level, have access to healthy food is imperative. “Community members, especially low-income residents and people of color, may face multiple barriers to accessing and purchasing healthy food, from a lack of healthy food retail outlets in their neighborhoods, to affordability challenges for fresh foods.”<sup>246</sup> Programs that enable access to local food sources boost local economic benefits and help build local food networks by better connecting consumers to local farmers, and food related businesses. These programs work toward a range of social, health, and economic community goals, and fit squarely within the community economic development framework.

“Financial and regulatory incentives can increase community-wide sources of healthy food and help offset the often higher prices of those foods, making the healthier food an easier choice.”<sup>247</sup> In Washington, D.C., the city government passed a Supermarket Tax Exemption which offered grocery stores in underserved food deserts ten-year tax break for real property, business, personal property, and construction expenses. Additionally, the Food, Environmental, Economic Development in the District of Columbia Act was passed in 2010, and made their food system support efforts more robust. In addition to grocery store development incentives, these programs worked to deliver healthy, fresh produce to thirty-three small corner store retailers, along with important capacity building measures like free equipment, nutritional counseling, business development, and marketing assistance. Other programs can complement existing programs. The Food Insecurity Nutrition incentive grant offers a one-to-one match for nutrition assistance recipients to purchase fruits and vegetables at local farmer’s markets.<sup>248</sup>

## viii. Building Capacity for Community Food Production

Governments can play an important part in ensuring that regulatory, economic, and policy climates create farm friendly environments, lower barriers to food production, and foment the next generation of farmers. In many areas land use regulations can frustrate the ability to create new agricultural sites. In urban areas, many ordinances restrict the use of land for food production, processing, or sales (i.e. farmers markets and street vendors). In addition, widely varying or poorly drafted land use regulations across municipalities can create a significant barrier to food production.<sup>249</sup>

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<sup>246</sup> INCENTIVIZING THE SALE OF HEALTHY AND LOCAL FOOD, *supra* note 241.

<sup>247</sup> *Id.* at 2.

<sup>248</sup> *Id.* at 2-4.

<sup>249</sup> COMMUNITY FOOD PRODUCTION: THE ROLE OF LOCAL GOVERNMENTS IN INCREASING COMMUNITY FOOD PRODUCTION FOR LOCAL MARKETS, GROWING FOOD CONNECTIONS (2017), [http://growingfoodconnections.org/wp-content/uploads/sites/3/2015/11/GFCFoodProductionPlanningPolicyBrief\\_2017August29.pdf](http://growingfoodconnections.org/wp-content/uploads/sites/3/2015/11/GFCFoodProductionPlanningPolicyBrief_2017August29.pdf).

One way to create a favorable policy environment is to incorporate food security as a policy priority. For instance, part of Belo Horizonte's success was including the right to food as part of all city residents' overall rights. Alternatively, prioritizing food justice could be as simple as including language in comprehensive plans.<sup>250</sup> The wide-ranging nature of comprehensive plans can plant the seeds for broad-based implementation of pro-agriculture policies. For instance, King County, Washington, has committed to the goal of establishing 400 net new acres in food production and twenty-five new farmers per year, each year, for ten years. This broad goal is intended to give way to various policies that will achieve this target, albeit without any specific route for accomplishing it. Another way for governments to jump start local food production levels is to commission policy studies that survey the strengths, weaknesses, opportunities, and barriers to increased agriculture production.<sup>251</sup>

Municipalities can also make it clear in zoning ordinances that agricultural uses are permitted. In urban areas especially, ordinances should:

[D]efine different urban agricultural uses; identify the districts where community gardens, commercial gardens, and urban farms are allowed; establish permissions for accessory agricultural structures such as greenhouses, hoopouses, compost bins, and toolsheds; provide permissions and standards for livestock such as chickens and bees; and provide permissions and standards for farmstands and farmers markets.<sup>252</sup>

Local codes should also encourage the development of necessary agriculture infrastructure such as, community kitchens, incubators, and food processing facilities. For example, Minneapolis has adopted a range of zoning amendments that establish permissions for community gardens, market gardens, and urban farms across all different districts. Further, these zoning changes permitted accessory uses and structures like animal coops and pens, aquaponics systems, and hoop houses.<sup>253</sup> Other communities, like Scott County, Iowa, go further, and create as-of-right permissions for agriculture. Their zoning code exempts farm infrastructure and uses from compliance.<sup>254</sup>

Financial incentives can also be used as a tool to build capacity for local agriculture. San Francisco has created an Urban Agriculture Incentive Zone, that reduces property tax rates for agriculture sites that produce public benefit likes education, community gardens or food donations. For farms in Woodbury County, Iowa, converting from conventional to organic farming techniques can result in up to a \$50,000 grant in property tax rebates. In Washington, D.C., the city created

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<sup>250</sup> *Id.*

<sup>251</sup> FARMLAND PROTECTION: THE ROLE OF LOCAL GOVERNMENTS IN PROTECTING FARMLAND AS A VITAL LOCAL RESOURCE, GROWING FOOD CONNECTIONS (2017), [http://growingfoodconnections.org/wp-content/uploads/sites/3/2015/11/GFCPlanningPolicyBrief\\_FarmlandProtection\\_2017Sept1.pdf](http://growingfoodconnections.org/wp-content/uploads/sites/3/2015/11/GFCPlanningPolicyBrief_FarmlandProtection_2017Sept1.pdf).

<sup>252</sup> INCENTIVIZING THE SALE OF HEALTHY AND LOCAL FOOD, *supra* note 241, at 5.

<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

a 90 percent tax abatement for land within the city that was being used for urban farming or community garden purposes.

Communities can protect valuable arable land for agriculture, or similarly open unproductive publicly owned land for food production. Many communities have made vacant city-owned properties available for lease for community gardens. More robust programs, like in Boulder County, Colorado, where the Parks and Open Space Department manages approximately 25,000 acres of agricultural land, 15,100 acres of which are cropland leased to local farmers and ranchers.<sup>255</sup> Similarly, Vermont “provides that, ‘accepted agricultural . . . practices, including the construction off farm structures’” are not regulated at the local level.<sup>256</sup> In undeveloped areas facing sprawl-like development pressure, growth management techniques can also be used to protect farmland. These measures can include large minimum lot size requirements, prohibit uses that are not compatible with agriculture, and include extra layers of municipal review for development sited in designated green areas.<sup>257</sup>

#### ix. Ensuring Puerto Rico’s Food Security

As a necessary economic good, more communities around the world are recognizing the importance of ensuring their own food security. Many consider food as a basic human right.<sup>258</sup> As the islands of Puerto Rico have a poverty rate more than double the national average and a high dependence on food assistance programs, Puerto Rico should take back control of its food systems to ensure its residents’ food security. Through an application of community economic development to the agricultural sector, Puerto Rico can bolster its local economy and resiliency, alongside efforts to build human and social capital to sustain these burgeoning food systems.

#### B. *Community Solar as an Avenue to Agency in Puerto Rico’s Energy Sector*

Puerto Rico’s public Electric Power Authority (PREPA) recently submitted its fiscal plan in its effort to privatize the islands’ power infrastructure.<sup>259</sup> However, the political and bureaucratic obstacles that hinder many innovative ideas have

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<sup>255</sup> *Id.*

<sup>256</sup> AGRICULTURAL ECONOMIC DEVELOPMENT: LOCAL LAND USE PLANNING AND ITS EFFECT ON DIVERSIFIED ON-FARM ENTERPRISES, VERMONT AGENCY OF AGRICULTURE, FOOD & MARKETS (2015), [http://agriculture.vermont.gov/sites/ag/files/pdf/land\\_use/Agricultural\\_Econ\\_Dev\\_AAFM\\_02172015.pdf](http://agriculture.vermont.gov/sites/ag/files/pdf/land_use/Agricultural_Econ_Dev_AAFM_02172015.pdf).

<sup>257</sup> COMMUNITY FOOD PRODUCTION, *supra* note 249.

<sup>258</sup> Shuman, *supra* note 137. See also *Belo Horizonte’s Food Security Policy*, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, <http://www.fao.org/right-to-food/en/> (last visit June 13, 2018).

<sup>259</sup> Emma Foehringer Merchant, *Puerto Rico’s Utility Moves Toward Privatization, With Strained Cooperation*, GREENTECH MEDIA (Feb. 5, 2018), [https://www.greentechmedia.com/articles/read/puerto-ricos-utility-moves-towards-privatization-but-struggles-persist-in-b#gs.pCAL1\\_c](https://www.greentechmedia.com/articles/read/puerto-ricos-utility-moves-towards-privatization-but-struggles-persist-in-b#gs.pCAL1_c).

now come to the forefront of Puerto Rico's pivotal energy resiliency struggle. However, amidst these obstacles lies opportunity.

Community-owned solar programs can bring energy independence and resilience to those who need it most. These efforts must be bolstered by community capacity initiatives spearheaded by non-governmental organizations (hereinafter "NGOs"), small businesses, and a strong community-organizer presence. This will provide Puerto Ricans the ability to work around the current restrictions and barriers to bring community solar power. In theory, this type of neighborhood-level organization can turn ideas that meet a community's needs into reality, without having to wait for the power struggle over the islands' energy privatization to end.

The battle for control over the procurement and creation of the new grid is fierce, and the list of groups touting interests in the islands' energy system include the Puerto Rico Energy Commission (hereinafter "PREC"), Governor Rossello's office, the FOMB created through PROMESA, and the various interested private stakeholders.<sup>260</sup> Likewise, financing the overhaul in lieu of Puerto Rico's ongoing debt raises concern that a privatized grid may use arbitrary rates or fee structures to raise capital to pay Puerto Rico's debt obligations. As such, the reality remains that the people of Puerto Rico must literally take the power into their own hands.

Early in 2018, Governor Rossello formalized the fiscal plan, *The New Vision*, stating that over the next eighteen months, the Puerto Rican government would pursue a concrete plan to sell PREPA to a private entity, ending eighty years of an energy monopoly.<sup>261</sup> The New Vision sets the goal of 30 percent renewable energy, with a focus on micro grid and backup-grid structures.<sup>262</sup> The plan ultimately requires a significant cash investment from private bidders and the Federal government.<sup>263</sup> Additionally, the New Vision would not completely eviscerate PREPA from the energy conversation. Under the most recent proposal, PREPA is slated to retain ownership of the new infrastructure, despite it being privately managed.<sup>264</sup>

On March 4, 2018, PREC filed a lawsuit against the FOMB on grounds the board is arbitrarily attempting to gain total control of the future of energy generation in Puerto Rico.<sup>265</sup> PREC argues that it alone has power over PREPA, and that the FOMB cannot authorize any actions, such as the selection of a private bidder, without first gaining PREC's approval.<sup>266</sup> Additionally, the lawsuit names PREPA

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<sup>260</sup> *Id.*

<sup>261</sup> Vann R. Newkirk II, *The Peril of Privatizing PREPA*, THE ATLANTIC (Jan. 24, 2018), <https://www.theatlantic.com/politics/archive/2018/01/puerto-rico-will-privatize-prepa/551342>.

<sup>262</sup> *Id.* See also Foehring Merchant, *supra* note 259.

<sup>263</sup> *Id.*

<sup>264</sup> Foehring Merchant, *supra* note 259.

<sup>265</sup> Robert Walton, *Puerto Rico regulators, federal oversight board wrestle for control of PREPA*, UTILITY DIVE, (Mar. 6, 2018), <https://www.utilitydive.com/news/puerto-rico-regulators-federal-oversight-board-wrestle-for-control-of-prep/518542>.

<sup>266</sup> Puerto Rico Energy Commission v. The Financial Oversight and Management Board for Puerto Rico, No. 181718 BK 4780-LTS (DPR March 4, 2018).

as a potential wrongdoer as well, citing PREPA's latest proposed fiscal plan which it alleged contained questionable grants of authority to the FOMB.<sup>267</sup>

PREC's filing for declaratory judgment and injunctive relief against both the FOMB and PREPA occurred just weeks after its Chairman, Jose Roman, stated that the PREC panel is "intransigent and unreasonable" to the detriment of private suitors of PREPA's utility assets.<sup>268</sup> In November, 2017, the U.S. District Court for The District of Puerto Rico held the FOMB does not have "broad executive and managerial authority over PREPA's operations,' the authority to 'interfere unilaterally with [PREPA's] powers . . . [its] property or revenues', nor the power to 'control virtually everything PREPA does.'"<sup>269</sup> Despite this prior ruling, virtually the same issues are being hashed out through costly litigation once again.

Meanwhile, over 155,000 people remain without power as of March 7, 2018.<sup>270</sup> The center of Puerto Rico remains most affected due largely in part to the difficult terrain and distance from major electrical substations.<sup>271</sup> The authors witnessed the persistent logistical challenges firsthand in areas such as Caguas, San Lorenzo, Patillas, Maunabo, Arroyo, and Guayama, during travels to these municipalities in mid-January, 2018.

Research performed by the University of Puerto Rico's *Instituto Nacional de Energía y Sostenibilidad Isleña* and the Resiliency Through Innovation in Sustainable Energy for Puerto Rico compiled a list of areas designated as low priorities for reconnection by PREPA, including over twenty-five municipalities within the center of the islands.<sup>272</sup> Because it is probable that these municipalities might be too difficult to connect to future micro grid solutions even after privatization and rebuilding, grassroots initiatives, such as Casa Pueblo, Solar Oasis, and the Solar Powered Educational Learning Library identified the need for totally off-grid, renewable energy solutions.<sup>273</sup> Going off the grid can provide the community-level autonomy necessary to transform areas that formerly depended on large-scale, inefficient, and inadequate power supplies, into neighborhoods with an ownership stake both in renewable energy, and their community's future.

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<sup>267</sup> *Id.* at 13.

<sup>268</sup> Eva Lloréns Velez, *Energy Commission sues to reassert regulatory power over Puerto Rico electric utility*, Caribbean Business Regional Politics, (Mar 5, 2018), <http://caribbeanbusiness.com/energy-commission-sues-to-reassert-regulatory-power-over-puerto-rico-electric-utility>.

<sup>269</sup> *Id.*

<sup>270</sup> HURRICANES MARIA & IRMA MARCH 7 EVENT SUMMARY (REPORT #94), U.S. DEPARTMENT OF ENERGY (Mar. 7, 2018), at 2, [https://www.energy.gov/sites/prod/files/2018/03/f49/Hurricanes %20Maria %20%20Irma %20Event %20Summary %20March %207 %2C %202018.pdf](https://www.energy.gov/sites/prod/files/2018/03/f49/Hurricanes%20Maria%20%20Irma%20Event%20Summary%20March%207%2C%202018.pdf).

<sup>271</sup> *Id.*

<sup>272</sup> Cecillo Ortiz, Director, Instituto Nacional de Energía y Sostenibilidad Isleña de la UPR, Presentation at the RISE-PR Digital Conference (Feb. 7, 2018).

<sup>273</sup> *Id.*

i. Off-Grid Agency

A micro grid system is traditionally connected to the main grid. The grid-tied system powers itself when necessary, such as during a power outage across the traditional grid and uses traditional grid power when it runs out of battery due to high consumption or cloudy weather. Because the privatization and creation of a new grid will likely structure rates and service fees in some manner to offset PREPA's debt, remaining grid-tied leaves consumers exposed to bearing those costs and municipal budgets exposed to PROMESA oversight.

Going off-grid means being self-reliant and self-sustaining.<sup>274</sup> The off-grid power system produces and stores all its own power. If it runs out, it can be connected to a backup generator.<sup>275</sup> While there is a downside of no power utility to connect to in the event the off-grid system is depleted, and the backup generator fails, there are no upsides in power bills or service fees for consumers, let alone interest payments on debt.<sup>276</sup>

Despite startup costs for an off-grid solar array being as much as \$15,000 more than a grid-tied system, an off-grid model makes sense for many municipalities and communities in the center of Puerto Rico for several reasons.<sup>277</sup> First, the idea of no power bills or utility fees may be attractive to individuals and communities that feel PREPA's rates and billing practices are historically inaccurate or inflated.<sup>278</sup> Next, the off-grid model is more resilient during storms and outages because it never relies on traditional, public utility-owned grid connections.<sup>279</sup> Lastly, off-grid systems are perfect for a community-ownership model because they are free of third-party oversight and regulation, and as such, have the capacity to channel the benefits of clean, renewable power directly to consumers in their entirety.<sup>280</sup>

ii. Sustainability & Resiliency Saves Money

Whether off-grid or grid-tied, the ultimate goal for Puerto Rico is to benefit from clean, renewable energy for the purpose of building resiliency. Currently, research compiled by the American Action Forum indicates that moving Puerto Rico toward the New Vision goal of 30 percent renewable energy generation by

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<sup>274</sup> Angelika, *Off-Grid or Grid-Tied Solar – What's the Difference?*, HOW TO USE SOLAR POWER (2018), <http://howtousesolar.com/off-grid-or-grid-tied-solar-whats-the-difference-2>.

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> Ortiz, *supra* note 272. *See also id.*

<sup>278</sup> *See* Angelika, *supra* note 274.

<sup>279</sup> *See id.*

<sup>280</sup> *Id.*

even half, just 12 percent, would result in savings approaching \$200 million annually and allow the private entity controlling PREPA's income the capacity to pay off the utility's debt in roughly a decade.<sup>281</sup>

PREPA's debt problem primarily stems from the high costs it incurs to produce energy on the islands.<sup>282</sup> It costs PREPA nearly \$204 to produce just a single megawatt hour (MWh) of electricity, or roughly four times the typical mainland United States cost per MWh.<sup>283</sup> With only 2 percent of energy production coming from renewables, burning fossil fuels and purchasing power from abroad cost PREPA a staggering \$3.15 billion in 2014.<sup>284</sup> Using these figures as a baseline, and adjusting for fluctuations in oil prices and other administrative expenses, PREPA's balance sheet is clearly unsustainable.<sup>285</sup> While fossil fuel reliance is typical of islands due to its low cost and accessibility, PREPA's refusal to diversify its energy portfolio to newer and cheaper sources is atypical, relying instead upon oil-fired power plants with an average age of over forty-three years.<sup>286</sup> To make matters worse, the Jones Act legally requires U.S. shipping vessels be used to transport all Puerto Rico-bound products, including fuel, coming from the Mainland.<sup>287</sup>

Governor Rossello aims to increase Puerto Rico's renewable energy portfolio from 2 percent to 30 percent over the next ten years, an increase sufficient to cut the average Puerto Rican customer's electric bill by 15 to 20 percent.<sup>288</sup> Off-grid energy solutions sponsored by small businesses and NGOs have the capacity to further save communities and municipalities money.<sup>289</sup> In turn, these savings create more purchasing power for individuals and a better ability for municipalities to assist in debt repayment.

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<sup>281</sup> Phillip Rossetti et al., *Reforming Puerto Rico's Electric Company Would Save Money*, AMERICAN ACTION FORUM (Dec. 14, 2017), <https://www.americanactionforum.org/research/reforming-puerto-ricos-electric-company-save-money>.

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> PUERTO RICO ELECTRIC POWER AUTHORITY, *PREPA FISCAL YEAR 2015 BUDGET* (2014), [https://www.aeepr.com/Documentos/Ley57/Tarifa/03 %20Attachment %20B %20- %20Schedules/1 %20SchedulesI-3/141009 %20PREPA %20Fiscal %20Year %202015 %20Budget %20Variance %20Anal- ysis %20Presentation.pdf](https://www.aeepr.com/Documentos/Ley57/Tarifa/03%20Attachment%20B%20-%20Schedules/1%20SchedulesI-3/141009%20PREPA%20Fiscal%20Year%202015%20Budget%20Variance%20Analysis%20Presentation.pdf).

<sup>285</sup> *Id.*

<sup>286</sup> Rossetti et al., *supra* note 281.

<sup>287</sup> Puerto Rican Federal Relations Act of 1917, Pub. L. No. 64-368, 39 Stat. 951 (1917).

<sup>288</sup> *Id.*

<sup>289</sup> See *Will joining a community solar garden save you money – or foster community?*, ENERGY SAGE (Jan. 20, 2015), <https://news.energysage.com/will-joining-community-solar-garden-save-you-money-bring-you-community>.



### iii. Agency via Community Ownership: The PUSH Model

Going off-grid entails significant startup costs, most of which are unrealistic for an individual living with a median annual income of \$20,000.<sup>290</sup> Community-owned solar arrays that power several homes, an entire street, or an entire community off the grid may be a viable alternative to grid-tied systems, and the prohibitive cost of individual off-grid models.<sup>291</sup> For a community solar project to be effective, significant community engagement is necessary to ensure development is implemented in a way that the community can support.<sup>292</sup>

People United for Sustainable Housing (PUSH) offers a model that serves as an ongoing example. PUSH resides in Buffalo, New York, which, like Puerto Rico, suffers from widespread poverty, outdated critical infrastructure, food deserts, and a general lack of environmental justice.<sup>293</sup> Buffalo's loss of traditional manufacturing jobs, suburban sprawl, and lack of state funding resulted in massive municipal debt, a median household income of \$27,850, and nearly 29 percent of the population living in poverty.<sup>294</sup> These figures sharpen even further within Buffalo's West Side, a racially diverse neighborhood with a large immigrant and refugee population.<sup>295</sup> However, a group of community organizers understood that in their individual capacity, residents of the West Side would continue to struggle for environmental and socio-economic justice. But, together, they could form a resilient and regenerative neighborhood for future prosperity.

### iv. Who is PUSH?

PUSH is a member-driven, non-profit organization that combines community development and organizing to address community needs and build greater community control of resources on Buffalo's West Side.<sup>296</sup> PUSH operates as a 501(c)(3) corporation that is exempt from federal income tax under Title 26 of the United States Code.<sup>297</sup> Consequently, PUSH receives the vast majority of its funding

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<sup>290</sup> Rossetti et al, *supra* note 281.

<sup>291</sup> *Id.*

<sup>292</sup> See Will joining a community solar garden save you money, *supra* note 289.

<sup>293</sup> PPG, <https://ppgbuffalo.org/issues/overview> (last visited May 16, 2018).

<sup>294</sup> "Poverty USA – Catholic Campaign for Human Development – A hand up, not a hand out", USCCB.ORG. (July 27, 2011), <https://web.archive.org/web/20110710140234/http://www.usccb.org/cchd/povertyusa/povfact6.shtml>.

<sup>295</sup> PUSH Buffalo, "The Neighborhood," *Green Development Zone*, 2012, [https://ppgbuffalo.org/files/documents/push\\_buffalo\\_27s\\_green\\_development\\_zone.pdf](https://ppgbuffalo.org/files/documents/push_buffalo_27s_green_development_zone.pdf).

<sup>296</sup> Hafner & Ramaccia, *supra* note 173. *What Does It Look Like for a Community to Own Its Future?*, NONPROFIT QUARTERLY, (Jan. 5, 2018), <https://nonprofitquarterly.org/2018/01/05/look-like-community-future>.

<sup>297</sup> 26 U.S.C. § 501(c)(3) (2012).

through private financing, competitive funding awards through state and local grants, and charitable donations.<sup>298</sup>

PUSH began in 2005 with only six employees, but raised enough money to increase that number to over fifty.<sup>299</sup> The community members guide nearly all of the organization's projects.<sup>300</sup> PUSH's structure is bottom up: the members are the majority and most important piece, followed by staff, a board of directors, and the executive director.<sup>301</sup> As a result, ideas flow from the community upwards, with the staff interpreting the expressions of the communities around them to the Board, which is ultimately comprised of community leaders, which then decides on the best method to turn ideas into reality.<sup>302</sup>

v. Community Engagement: The Key to a Successful PUSH

By bringing residents together, PUSH assists underdeveloped neighborhoods achieve ownership of a better future by focusing on sustainable asset procurement and development.<sup>303</sup> In 2008, PUSH founded the Green Development Zone (GDZ) in Buffalo's West Side, an area encompassing twenty-five square blocks wherein 40 percent of residents and 60 percent of children live in poverty and is a community that city planning processes formerly failed to serve.<sup>304</sup> PUSH's goal is to transform the GDZ by switching the community from its old, fossil fuel driven economy, toward a green economy that values people and the environment over profit.<sup>305</sup> The majority of PUSH's efforts involve taking matters into its own hands as a community developer by purchasing vacant lots, buildings, and other assets and redeveloping them into efficient, green spaces.<sup>306</sup> "[A]nyone can become a member of PUSH for \$5 per year,"<sup>307</sup> and residents within the GDZ become member-owners of PUSH's community projects and direct beneficiaries of each project's resources and assets.

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<sup>298</sup> PUSH BUFFALO ANNUAL REPORT 2017, available at <http://173.254.28.164/~pushbuff/push3/wp-content/uploads/2018/04/Annual-Report-2017.pdf>.

<sup>299</sup> HART & MAGAVERN, *supra* note 174; *see also* PUSH Buffalo, Opportunities, PUSH BUFFALO, 2012, <http://pushbuffalo.org/opportunities>.

<sup>300</sup> *See* PUSH Buffalo, About Us, <http://pushbuffalo.org/about-us> (last visit June 15, 2018).

<sup>301</sup> HART & MAGAVERN, *supra* note 174, at 2.

<sup>302</sup> *Id.*

<sup>303</sup> *Id.*

<sup>304</sup> HART & MAGAVERN, *supra* note 174, at 1 (*citing* PUSH Buffalo and Buffalo Neighborhood Stabilization Company, Inc., "Building for the Future: Presenting a Community Development Plan for the Massachusetts Avenue Corridor Green Development Zone") (PUSH Buffalo, 2012).

<sup>305</sup> *Id.* (*citing* Chorus Foundation, "Chorus Foundation Site Visit Briefing Sheet") (Chorus Foundation, April 27, 2016).

<sup>306</sup> *Id.*

<sup>307</sup> *Id.* at 3.

PUSH uses several methods to gather community input for its work in the GDZ, including door-to-door canvassing; community meetings; social media; text-messaging campaigns; and surveys.<sup>308</sup> By using multiple methods for community outreach, PUSH ensures it reaches a wider audience and better engages the community as a whole.<sup>309</sup> Door-to-door canvassing has been particularly successful for the PUSH model,<sup>310</sup> creating a platform for individual voices to be heard, voices that might otherwise be diluted in a group setting. Additionally, going door-to-door solidifies to PUSH and the community members that PUSH is gaining support for what is best for the community, not what is easiest or most convenient for PUSH.<sup>311</sup> In Loíza, following Hurricane Maria, the nonprofit nongovernmental organization, *Taller Salud*, went door-to-door collecting information directly from residents.<sup>312</sup> This information gathering allowed the group to most effectively distribute necessary supplies. Clearly, several municipalities are already working with organizations to implement this strategy in Puerto Rico.

To synthesize community needs into tangible goals, PUSH regularly holds meetings that are open to the public and utilizes presentations “to orient people to the [meeting] topic[s] and to explain the options for [a proposed] project.”<sup>313</sup> PUSH meetings normally include a mix of verbal, visual, and written components to allow neighborhood residents to communicate in their preferred method.

At meetings residents participate in a variety of activities that allows them to get, directly involved in the community projects:

At meetings, residents may be asked to draw, place sticky notes, or move around cards representing different uses on a map in small groups. These types of activities are engaging and require participants to actively use their experiential knowledge of the neighborhood to propose relevant and specific solutions. . . . At the end of each meeting, PUSH facilitators ask each group to report back their ideas.<sup>314</sup>

Another issue that PUSH identifies is the following:

Unemployment is a huge issue among GDZ residents, as is the prevalence of poverty-wage and underpaying jobs. In the census tract that encompasses the majority of the Green Development Zone, the unemployment rate is nearly 20 percent,

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308 *Id.* at 6.

309 *Id.*

310 *Id.* at 6-7.

311 *Id.*

312 *See generally* TALLER SALUD, <https://www.tallersalud.com> (last visited May 16, 2018).

313 HART & MAGAVERN, *supra* note 174, at 7.

314 *Id.* at 7-8.

and the median household income is \$16,000 per year, with 28 percent earning less than \$10,000 per year.<sup>315</sup>

PUSH's creates jobs and provides training proximate to the GDZ.<sup>316</sup> "PUSH believes that quality jobs paying at least family-raising wages are an absolute prerequisite to a sustainable neighborhood economy, which is also why PUSH supports the *fight for \$15*, a national movement to increase the minimum wage to \$15 per hour."<sup>317</sup>

To address job and living-wage creation, PUSH hires community workers for the construction of sustainability projects.<sup>318</sup> Jobs for these projects include: fitting solar panels on rooftops and solar arrays; building housing units; creating sustainable farms and landscaping efforts; and installing rain catchment units, rain gardens, and other green infrastructure.<sup>319</sup> Because PUSH is dedicated to helping West Side and GDZ neighborhood residents, it does not actively market its job-creation programs to potential workers outside the area.<sup>320</sup> For projects requiring the assistance of outside developers and commercial construction contractors, PUSH lobbies to ensure that community workers become subcontractors on such projects.<sup>321</sup> PUSH focuses on those with the greatest stake in their communities to ensure the benefits are retained locally.

Based shared realities, deploying a similar strategy in Puerto Rico would not only provide clean and affordable energy, but increase market demand to retain wealth in its communities, upskill and educate local residents, improve community labor pools, and create a more sustainable economy. Such a process would have the capacity to stimulate wealth creation, dissuade population migration, and prevent labor outsourcing.

#### vi. Using the PUSH Model in Context

The PUSH model is not a rigid formula for grassroots community engagement or resiliency formation, instead, it is a loose framework that is intended to be melded to meet the specific needs of any community around the world.<sup>322</sup> The transferability of PUSH's key concepts makes it an intriguing model for Puerto Rico.

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<sup>315</sup> *Id.* at 26; see also *United States Census, 2010*, UNITED STATES CENSUS BUREAU, (2010), <https://www.census.gov/programs-surveys/decennial-census/decade.2010.html>.

<sup>316</sup> HART & MAGAVERN, *supra* note 174, at 26.

<sup>317</sup> *Id.*

<sup>318</sup> *Id.* at 134.

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

<sup>321</sup> *Id.*

<sup>322</sup> See Hafner & Ramaccia, *supra* note 173.

After canvassing neighborhood residents on the fringe of the GDZ in 2014, PUSH learned that people were very concerned about the future of School 77, a public school just outside the GDZ that was condemned in 2008.<sup>323</sup> While PUSH strives to promote and actively support both environmental and climate justice to communities in need, it also strives to do so through revitalization without displacement.<sup>324</sup> This may parallel concerns facing many communities in Puerto Rico following Hurricane Maria, as Governor Rossello and many others encourage cryptocurrency billionaires to use the islands as a blank canvas for commercial development.<sup>325</sup>

In an effort to prevent the negative externalities caused by gentrification from reaching the GDZ, when the City of Buffalo asked potential developers to submit proposals for School 77's redevelopment, PUSH quickly developed a proposal for the parcel's future that was responsive to the community's concerns.<sup>326</sup> During community meetings, residents lobbied for the inclusion of affordable senior living space as absolutely necessary to the approval of School 77, and PUSH responded.<sup>327</sup> Upon reviewing all community input, PUSH, with the help of a grant from the State of New York, transformed School 77 from a decrepit, overgrown space, to a community hub featuring thirty affordable housing units for senior citizens, mixed-use office space for other community-based organizations, and both indoor and outdoor farming space.<sup>328</sup>

The rooftop will serve as a community solar farm that allows GDZ and West Side residents to own shares of the solar power generated by the solar panels to offset their monthly electric bills.<sup>329</sup> Because School 77's solar farm is not owned by National Grid, the local public utility company, it is PUSH's goal to eventually make the GDZ completely reliant on community-owned solar energy generation, eliminating any need for connections to the traditional grid and providing total resiliency during power outages and blackouts.<sup>330</sup> A School 77-type development

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<sup>323</sup> Hart & Magavern, *supra* note 174, at 9.

<sup>324</sup> PUSH Buffalo, "Community Congress," PUSH Buffalo, (2016), [https://ppgbuffalo.org/files/documents/push\\_buffalo\\_27s\\_green\\_development\\_zone.pdf](https://ppgbuffalo.org/files/documents/push_buffalo_27s_green_development_zone.pdf).

<sup>325</sup> Naomi Klein, *Puerto Ricans and Ultrarich "Puertopians" are locked in a pitched struggle over how to remake the island*, THE INTERCEPT (Mar. 20, 2018), <https://theintercept.com/2018/03/20/puerto-rico-hurricane-maria-recovery>.

<sup>326</sup> Hart & Magavern, *supra* note 174, at 9.

<sup>327</sup> *Id.*

<sup>328</sup> Governor Cuomo Announces \$14.7 Million Project to Transform Former School 77 Into Affordable Housing Units in Buffalo, NEW YORK STATE (May 16, 2017), <https://www.governor.ny.gov/news/governor-cuomo-announces-147-million-project-transform-former-school-77-affordable-housing>.

<sup>329</sup> Hart & Magavern, *supra* note 174, at 10.

<sup>330</sup> See ANTHONY HILBERT, ENERGY POVERTY IN BUFFALO'S WEST SIDE: PUSH, NATIONAL FUEL, AND THE FIGHT FOR EQUITABLE ENERGY ACCESS 5-7 (2016), <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1146&context=buffalocommons>.

in one community in Puerto Rico, if successful, could serve as a model for all vulnerable communities across the islands, especially those residing the low-priority reconnection zones.

vii. Community Green Initiatives at the Municipal Level

Ownership of energy is only the beginning: “In 2011, PUSH completed its Net-Zero House at 10 Winter Street, which is the first of its kind in the region. . . . The NetZero House has a solar photovoltaic system, geothermal heating, super insulation, a ventilation system, a metal roof, and a solar thermal system.”<sup>331</sup> In addition:

[A] net zero house generates all of its energy. . . . [and exists] to provide affordable housing for low-income families by cutting the costs of electric, heat, and gas bills. The house is designed to reduce pollution and greenhouse gas emissions and serve as a model of energy efficiency and renewable energy technology.<sup>332</sup>

The savings passed on from self-sufficient energy generation can then be put towards other sustainable practices, such as community gardens, as a further source of import replacement, agency and resiliency. PUSH’s community gardens provide plots for forty-five neighborhood families. This initiative has been very successful and “[t]he gardens give a diverse group of people—including many refugees from Burma—the opportunity to have a small stake in additional land and to plant all kinds of fruits and vegetables, some of which would not otherwise be available to them outside of their native countries or regions.”<sup>333</sup> Again, such a savings model in Puerto Rico would help increase individual and municipal-level purchasing power, debt repayment capacity, and ultimately, agency.

Crucially, the majority of community-owned green practices in Buffalo are possible as a result of well-drafted local and state legislation.<sup>334</sup> Drafting municipal codes to favor community-based solar and green initiatives are one way Buffalonians in largely neglected areas have taken environmental access to justice into their own hands, but the reach of a municipal code can stretch far beyond just grassroots solar projects and community gardens. The same can be done through municipal legislation drafting in Puerto Rico.

The City of Buffalo’s Green Code (the “Code”), formally adopted into law in January of 2017, set out new and modernized municipal zoning laws.<sup>335</sup> The new development ordinance implements a form-based zoning code, which is more

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<sup>331</sup> Hart & Magavern, *supra* note 174, at 13.

<sup>332</sup> *Id.*

<sup>333</sup> *Id.* at 16.

<sup>334</sup> N.Y. Agr. & Markets Law § 308 (2015).

<sup>335</sup> See Table 6A, UNIFIED DEVELOPMENT ORDINANCE, BUFFALO GREEN CODE (2016), [http://www.buffalogreencode.com/December\\_2016/UDO\\_Dec\\_2016.pdf](http://www.buffalogreencode.com/December_2016/UDO_Dec_2016.pdf).

flexible in meeting community needs.<sup>336</sup> Community gardens are allowed in nearly every designated zone (including residential, mixed-use, and downtown districts) with the small exception of areas zoned for heavy industrial use and in rail corridors.<sup>337</sup> The only restrictions on such community gardens are that seed, fertilizer, and feed must be stored in sealed, rodent-proof containers, and that no process or practice may be used if it creates dust, odor, or other detrimental effects outside the property.<sup>338</sup> Ultimately, while the drafters of the Code parsed out some of the narrowest concepts of green zoning, such as the storage requirements for market garden produce, the Code began as a comprehensive vision to address the specific needs of each of Buffalo's unique districts, within the overarching theme of regenerative and resilient environmental practices.<sup>339</sup>

Essentially, the Code did away with antiquated practices that held back innovation and resiliency, placing Buffalo on a simplified path to modern environmental and economic virtues. The Code addresses solar panels and urban agriculture, both previously not expressly permitted in most residential areas under the old code.<sup>340</sup> It is through the Code that grassroots economic development projects such as PUSH's GDZ and School 77 continue to strive in their pursuit of independent, self-sufficient communities, devoid of the negative externalities caused by political bureaucracies and profit-driven approaches. PUSH is largely supportive of the Code as a catalyst for its growing capacity to empower its stakeholders, and expand the boundaries of the GDZ to make the area even more healthy and stable.<sup>341</sup> As a result of the positive effects incurred through the Code and PUSH's efforts in the GDZ, Buffalo has increased its market demand for community-level solar procurement by partnering with the State of New York's Renewed Energy Vision (REV) initiative to site economically competitive solar energy in both urban and suburban locations.<sup>342</sup>

School 77 demonstrates how an opportunity that arose from the years of capacity-building can be leveraged into a transformative influx of resources dedicated to those with the greatest stake. Recognizing the efficacy of PUSH's efforts in the economic revitalization of underdeveloped neighborhoods, the State of New York was able to invest in PUSH as a conduit to do even more. The popularity of PUSH as a successful model is largely the result of collaboration at nearly every

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<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

<sup>338</sup> Buffalo Green Code, Ch. 496, § 6.1.7(A) (2017).

<sup>339</sup> *Land Use Plan: City of Buffalo*, BUFFALO GREEN CODE (2016), [http://buffalogreencode.com/September2016/LUP/lup\\_revised\\_sept2016.pdf](http://buffalogreencode.com/September2016/LUP/lup_revised_sept2016.pdf).

<sup>340</sup> Mark Sommer, *Buffalo's zoning code steps into the 21<sup>st</sup> century*, THE BUFFALO NEWS, (Dec. 27, 2016), <http://buffalonews.com/2016/12/27/city-code-21st-century>.

<sup>341</sup> Hart & Magavern, *supra* note 174, at 4.

<sup>342</sup> See *Localizing Buffalo's Renewable Energy Future: Leveraging Our Past, Investing in the Present & Building Tomorrow*, REV SUBMISSION (2016), [https://www.buffalo.edu/content/www/sustainability/keyinitiatives/localizing-buffalo-s-renewable-energy-future/\\_jcr\\_content/par/download/file.res/UB%20REV%20Application%20Proposal%20-%20Reduced%20file%20Size.pdf](https://www.buffalo.edu/content/www/sustainability/keyinitiatives/localizing-buffalo-s-renewable-energy-future/_jcr_content/par/download/file.res/UB%20REV%20Application%20Proposal%20-%20Reduced%20file%20Size.pdf).

sector of society, from academia and governmental, to private business and stakeholders. This is evidence that when efforts to increase community capacity are successful, an injection of state-sponsored funds can turbo-charge community development to a much greater extent than if those same funds were provided through traditional economic development.

Both PUSH and REV picture a future where dynamic communities build efficient, cost effective local markets, a trained local workforce, and resilient neighborhoods throughout the city with the capacity to own renewable energy at constant prices that are well below their historical averages.<sup>343</sup> Ideally, this can begin within any community, whether in Buffalo or Puerto Rico, creating a closed loop resilient system of employment, education, revenue, budget predictability, public health benefits, greenhouse gas reductions, and most importantly, empowerment. Many see post-Hurricane Maria Puerto Rico as an exploitable venture for wealth creation and outsourced development through vacation resorts and tax-incentivized large-firm growth plans. Yet, this state of vulnerability also presents the opportunity to rebuild Puerto Rico's social, economic, and political capacities within communities from the ground up (as opposed to the traditional trickle-down mode of economic development), and create sustainable prosperity.

#### CONCLUSION – PROSPERITY FROM WITHIN

The enactment of PROMESA is a mere continuation of Puerto Rico's colonial status. First, it reaffirms the reality that Puerto Ricans do not have the ability to control their government's political, social, and economic future. Second, it presents a very real barrier to the traditional mode of economic development by severely constraining the ability of the Commonwealth to provide the necessary largescale tax incentives to attract large firms, primarily because these incentives and opportunities are subject to the scrutiny of the FOMB. This paper provides a potential method for a decentralized community-level approach that exists at the outer reaches of PROMESA's oversight and constraint. Having not interfered with municipal budgets policies at a line-item level to date, there is opportunity to implement innovative community-level economic and social policies. Rather than remain mired in the post-Maria exacerbation of PROMESA's fiscal constraints, Puerto Ricans are left with no choice but to craft favorable laws and fuel community initiatives to ensure a resilient Puerto Rico endures a future, that, while filled with many uncertainties, will certainly contain many more hurricanes.

A community economic development model that prioritizes the localization of necessary economic goods has the twofold benefit of building resiliency and individual wealth. Localization works through import replacement by focusing spending practices on necessary economic goods. Increasing spending on locally-sourced necessary economic goods, in turn, naturally increases a locality's resili-

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343 *Id.*



ency to shocks, the local economic multiplier, and the wealth of the local economy. The implementation of this mode of economic development relies on improvements to local governance and more general community capacity building to support local businesses. The resulting increase in community capacity and individual wealth will lead to greater political engagement and power. This acquisition of power will allow Puerto Ricans to reclaim control over their destiny.

Ideally, import replacement in one municipality will spread into neighboring municipalities, resulting in a robust regional economy with a growing capacity in the quantity and quality of local jobs. Once a network of community-level capacity exists, it becomes self-sustaining and able to perpetuate the retention of local economic wealth. An application of this model to the agriculture and energy sectors has the potential to catalyze Puerto Rico towards a sustainable future.

The case studies discussed in this paper serve as flexible framework for grassroots, community organizers anywhere. The opportunity now exists for Puerto Rico to build: (1) social capital by engaging its communities; (2) economic capital by investing and building sustainable infrastructure with the help of community groups and private organizations; and (3) human capital, through the upskilling of local workforces, which results in resource retention and more resilient regional labor pools. The implementation of this framework must occur at the local municipal level because it appears to be the only viable fiscal area for opportunity not expressly falling under the scrutiny of PROMESA. Drafting municipal-level policy that localizes necessary economic goods, invests in community capacity, and keeps wealth on the islands will bring sustainable prosperity.

Puerto Rico's fierce patriotism should serve as a cornerstone for the implementation of this method. There is no doubt that *Puerto Rico does it better*.<sup>344</sup> Puerto Ricans should naturally rally around a call to support and grow their local businesses. Puerto Rico's strong community response following Maria is evidence that the islands are brimming with unrealized potential. Puerto Rico can thrive if law and policy-makers create the proper political, social, and economic ecosystems. Moving Puerto Rico to a more sustainable future is a massive undertaking, and while the Commonwealth of Puerto Rico has little choice left, Puerto Ricans themselves do. Each individual controls how they participate within his or her community. It is now imperative that Puerto Rican officials, law and policy-makers, and other leaders create systems that empowers individuals to make the choices that support *their* community.

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<sup>344</sup> *Puerto Rico tourism campaign really does do it better*, (Dec. 1, 2011), <https://www.eturbonews.com/52015/puerto-rico-tourism-campaign-really-does-do-it-better>.