

**REMARKS OF ANDRES W. LOPEZ  
RECONSIDERING THE INSULAR CASES  
HARVARD LAW SCHOOL  
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Good afternoon. It is always an honor to return to Harvard. I want to thank Gerry, Tomiko, and all those responsible for organizing this conference – the first time in Harvard’s history that we reconsider the Insular Cases. I want to extend a special word of thanks to my great friend Martha Minow. Martha’s inspiring leadership of our *alma mater* gives me hope that just as Harvard played an all-too-prominent role in paving the way for the Insular Cases in the 20th Century, it will be Harvard and its modern-day alumni who will help eradicate their legacy in the 21st Century. So it is important that this conference is taking place now, at Harvard, in this unique moment of crisis. I thank Martha for making that happen.

In keeping with the conference theme, today’s crisis provides us with an opportunity for *re-consideration* – literally, to *consider again* decisions of the past, and ask ourselves if we would do it the same way. For example: if we had to do it again, would we create an inherently unequal American territory whose very structure undermines the concept of the consent of the governed, and hold it in seeming perpetuity? By like token, would we demean the concept of American citizenship by inventing a second category of citizens without the same constitutional rights as every other citizen? I don’t think so. If we are to change the course of history, then, our goals must be clear: America cannot hold territories indefinitely, and America cannot have second-class citizens. Our goal must be equality.

If Puerto Rico’s structural problem is its fundamental inequality, today’s crisis shows the consequences of sustained inequality. Puerto Rico’s territorial status has impaired its ability to develop economically, politically, and socially. It begs the question: were territories meant to

last *as territories* for over 100 years? After 115 years of kicking that can, we know the answer. We must step back and reconsider everything from the start.

If we're going to start at the beginning, we must begin at Harvard. It is impossible to overstate Harvard's role in laying the groundwork for the Insular Cases – that empire-minded vision, fueled by prejudice, that America could hold territories indefinitely and create a sub-category of citizens in this country. Some of that breathtaking *chutzpah* no doubt stems from the notion (thankfully a relic today) that only Anglo-Saxon males could be trusted with the duties of self-government. After all, this was the age of separate but equal, where women could not vote, and there was no marriage equality.

Of all the *Harvard Law Review* authors who wrote about America's new possessions, none was more influential than my fellow Harvard Law alumni Abbott Lawrence Lowell. Fittingly, Lowell became a government professor at Harvard in 1898, the year the US acquired Puerto Rico. The next year, Lowell published his infamous article entitled *The Status of Our New Possessions: A Third View*, which persuaded the Supreme Court to invent the unincorporated territory. Lowell later became President of Harvard, and as a student here I benefitted from some of his reforms. As a Puerto Rican, I (and millions like me) have been disproportionately affected by one of his greatest mistakes.

Before the Insular Cases, the acquisition of a territory meant eventual equality, without exception. Moreover, the grant of American citizenship *always* meant equality. Before Lowell's article, the notion that Congress could hold territories indefinitely ran counter to the very principles that led to America's existence. And yet, Lowell concluded that applying the constitution in the new territories would lead to an "irrational result." That peculiar phrase becomes easier to understand after one learns of other "irrational results" that Lowell sought to

avoid. To note just one example well-documented in Professor Ken Mack's book *Reconsidering The Race*, Lowell thought it irrational to force upon white Harvard students the "alien notion" of having their black counterparts live under the same roof in Harvard's dorms. Unlike in the Insular Cases, Lowell's view did not carry the day. While we have largely erased the stain of this type of insidious prejudice, the Insular Cases and their rationale still stand today as remnants of a bygone era that the country has left behind.

In my view, the United States cannot hold territories indefinitely in an unequal state. And Puerto Rico's current crisis provides Harvard with an opportunity to say just that. Harvard should play a leading role, as it did back then, but this time to help put an end to this shameful legacy of discrimination. As we *re-consider* Harvard's role in the Insular Cases and Puerto Rico's future, we must ask ourselves: would Harvard endorse Lowell's views today? Would it support such aberrational notions of inequality? I'm convinced it would not. Lowell got it wrong in the 20th century. Harvard can get it right in the 21st century.

That is Harvard's challenge. *First*, Harvard should say that America cannot hold territories indefinitely. That's not America. That's not who we are. A country founded on the concept of the consent of the governed cannot keep a territory in a perpetual state of limbo. *Second*, Harvard should say, as Justice Margaret Marshall did in her ruling on marriage equality, that our constitution *forbids* the creation of second-class citizens. Harvard should say, as Justice Harlan did in his Insular Cases dissent, that our constitution is color-blind and neither knows nor tolerates classes among its citizens. The time has come for Harvard to vindicate Justice Marshall and Justice Harlan's views. And the time has come to consign Lowell's misguided view to the dustbin of history.

In my view, today's crisis also presents a unique opportunity for President Obama. I am proud to have played a role in his two historic elections. With regard to Puerto Rico, I am proud that President Obama has changed federal policy for the better. Thanks to the work of the White House Task Force on Puerto Rico's Status and the Democratic Party's Platform Committee, the course of action for the president's second term clearly signals an urgent need for change. Our policy on Puerto Rico is rooted in a trilogy of principles: *first*, that the failure to resolve the status problem has held Puerto Rico back, and that the time has come for Puerto Rico to take the next step in its relationship to the rest of the United States; *second*, that the economic success of Puerto Rico is inextricably intertwined with a swift resolution of the status issue; and *third*, that the White House specifically commits to move the status issue forward with the goal of resolving it *expeditiously*. These bedrock principles are timely given today's crisis, and they point the way to a resolution of the problem.

More recently, after the historic November 2012 vote where Puerto Ricans voted overwhelmingly to reject the status quo, the White House made history again by saying that the results of the vote were clear, that the people of Puerto Rico want to resolve their status, and that statehood – the people's choice for a path forward – had prevailed. Last month, President Obama signed into law a bill that provides a \$2.5M allocation and a process to *resolve* Puerto Rico's status. And the chorus for change keeps growing louder in Congress: Senator Wyden, Senator Heinrich, and Senate Majority Leader Harry Reid are just some of the Members who have recently expressed their support for Puerto Rico equality.

President Obama has done much for Puerto Rico. Today's crisis gives him an opportunity to do much more. He has an opportunity to fulfill a pending promise and to cement his legacy. When he became president, President Obama promised to resolve Puerto Rico's

status problem during his first term in office. He made that vow most publicly in a 2009 letter to Puerto Rico. He acknowledged that prior administrations had kicked the can for years on this issue, and said: “*This time must be different.*”

This time *is* different. For one thing, the current crisis urgently calls for a once-and-for-all resolution to the problem. More importantly, since the start of his second term, President Obama’s administration has officially become the *first* administration in American history to confront a clear rejection of the status quo from the people of Puerto Rico. The people have spoken, the promise is pending, and our crisis is urgent. The President can resolve it and make history.

President Obama also has an opportunity to cement his legacy. In his second Inaugural Address, the President spoke movingly about how “our journey is not complete” until we ensure, for example, that a little girl born in the bleakest poverty knows that she has a chance to succeed like anybody else, because she is an American citizen, she is free and she is *equal*, not just in the eyes of God, but also in our own. I thought that was terrific. And yet I wonder if I was the only one who imagined that beautiful little girl being born Puerto Rico, and thinking to myself that if that was the case, she would not have an equal chance to succeed. If we truly are to make these enduring and self-evident rights true for *every* American citizen, then “our journey is not complete” until we achieve full equality of citizenship for that little girl and everyone like her.

We have all seen the seismic demographic change in the Latino community. I firmly believe that the story of Latinos is the story of America. The story of America cannot be one where that little girl born in the bleakest poverty knows that she does *not* have an equal chance to succeed because she feels the burden of a second-class citizenship and suffers the consequences of that inequality every day. The story of America cannot be one where a president can send a

young man into harm's way to defend our freedoms but that young man is not free to vote for his commander in chief. The story of America cannot be one where you're good enough to die for your country but not good enough to vote in it. And the story of America cannot be one where a citizen can be good enough to raise millions of dollars to help elect a president but not good enough to cast a single vote at the ballot box. In the story of America, no right is more central to citizenship, no right makes us more equal, than the right to vote. And there's the opportunity: President Obama can become the first President in American history to cast the issue of equal citizenship for Puerto Ricans as a moral imperative.

In 1963, President Kennedy did something no other president – not even Lincoln – had done. He committed the country to assuring *full equality* for African Americans, and declared that doing so was a *moral imperative*. Just last month, I heard President Obama say, in the context of immigration, that we do not want a situation in which we have two categories of persons in this country, and I said, that's exactly right – except we have that now. As the President says, we should not.

The President should commit the country to assuring equal citizenship for Puerto Ricans as a moral imperative. He should say that our constitution forbids the creation of second-class citizens. If he does so, in my view, he would cement his legacy with the Puerto Rican community, who hold few things as dear as their American citizenship. President Obama is uniquely equipped to make this case. He was born on an island, which was the last territory to become a state, and his family history shows that he understands all too well the soul-crushing effects of colonialism. In light of the 2012 vote rejecting the status quo, and the 2014 crisis that is deeply rooted in the legacy of the Insular Cases, the President has the chance to bend the moral arc of history – which bends towards justice, but doesn't bend on its own.

We now have an opportunity to complete our journey. Until we resolve the structural problem – really, the civil rights deficit – that has held Puerto Rico back, we will only be placing band aids on the real problem. At other difficult times in our history, some have said, let's not focus on solving our structural problem; let's focus instead on other issues, like the economy. But as the White House has established, our economic success *requires* resolving our status problem. In this moment of truth, band aids just won't do.

We have a fundamental choice. We can continue down our current path, and say again that status is not the issue, or we can have the courage to change. The people of Puerto Rico showed enormous courage in November 2012 when they rejected the status quo and said *we want change*.

When Rosa Parks refused to sit on the back of that bus and changed the course of history, she did so because she got fed up and did something about it. The 2012 vote shows that Puerto Rico is fed up. The 2014 crisis requires that we do something about it. Too many times we've expected change to come *from* Washington, but our history shows the real change works exactly the other way: change must come *to* Washington. That's what we must do.

Our Time Is Now. El Futuro Es Nuestro. Thank you very much.