

Puerto Rico on the Inclusiveness Frontier

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I

Currently, there is an effort in the US Congress to legislate a binding referendum that could put Puerto Rico on a definitive path to being admitted as a state. The substantive reasons for this vote being called for at this time are manifold. In the long and intermediate term, they include issues such as the current quest for a more inclusive America, issues of identity and social solidarity, a sense of political fairness, and a question of national security.

The quest for a more inclusive America

As the fight against racial/ethnic discrimination and for inclusiveness has come to the forefront of American politics during the last decades, the inferior status of the Commonwealth of Puerto Rico has become ever more problematic locally, nationally, and internationally.

The inferior juridical nature of the Commonwealth flows from the Court created status of “unincorporated territory” (*Downes v. Bidwell*, 1901) which has remained unaltered until today (*Balzac v. People of Puerto Rico*, 1922, *Califano v. Torres* 1978, *Harris v. Rosario*, 1980, *US v. Sanchez-Valle*, 2016 and *US v. Vaello Madero*, 2022, Torruella, Juan R, *The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal* 1985, ISBN 10: 084773031X, ISBN 13: 978084773031) In 1901, the Supreme Court devised the doctrine of “Unincorporated Territory” to explain why residents of Puerto Rico and other territories acquired during the Spanish American War could be divested by acts of Congress of constitutional protections and rights that residents in the several states as well as in other “incorporated territories” could claim in Courts. Hence, Congress became empowered to “switch on and off parts of the Constitution” at will in the unincorporated territories if it deemed there was a “rational basis” to do so. Moreover, Congress was granted plenary powers over the territory excluding any of the limits that federalism imposes

on its dealings with states. Among these powers is the power to discriminate against American citizens residing in the Island in economic and civil rights matters (*Vaello, 2022; Balzac, 1922*). In a presentation I did at Georgetown University in 2019, I detailed how for the past 120 years malignant discrimination has been at the center of US territorial politics towards Puerto Rico which, conspicuously, is populated overwhelmingly by Spanish surnamed citizens. The lack of development in Puerto Rico in comparison to the states can be readily traceable to such discriminatory policies.

Social solidarity and identity

The discriminatory treatment by Congress does not represent the attitudes of a majority of the American people, especially in recent years. In 2017, the onslaught of Hurricane Maria brought devastation to the island, destroying its electric grid, costing the lives of more than three thousand island residents, and causing untold loss and vicissitudes. It was a once-in-a-century catastrophe that totally upset social life for months.

On the positive side, however, the catastrophe made the US national media shed light for months on the fact that Puerto Rico is part of the United States, not a foreign country, and its residents are fellow American citizens in distress. Thus, hurricane relief and solidarity came not only from federal agencies but from many states, and from the hearts and hands of thousands of concerned persons and private institutions. As a result, the percent of respondents in National Opinion Polls favored granting statehood to Puerto Rico.

More importantly, since an opportunity to give is always an opportunity to learn, in this case, by giving, people on the mainland understood not only that Puerto Ricans in the island were fellow citizens but that their relatives living in their own states and communities were not foreigners either but members of the community and the nation. This brought America back to its founding notion, *E Pluribus Unum*.

National security

National Security has always been an important (some would say the main) reason for the US to maintain Puerto Rico under its sovereignty. On July 25, 1898, during the Spanish American War, the US invaded the Spanish colony of Puerto Rico to complete the ousting of the Spanish empire from the Americas. Cuba would become independent, but the US kept Puerto Rico to establish its military presence in the Caribbean region permanently. Promptly it became the vanguard post for the defense of the Panama Canal and during the Second World War was an important base to launch raids against the German U-boats in the region. During the Cold War it served politically as a “Showcase for Democracy” in the Caribbean area infested with dictators. Militarily, the Island became part of the strategic belt around soviet military interests in Cuba with bases capable of servicing B-52s, launching raids with fighter planes, and berthing submarines, even nuclear ones.

As the Cold War ended and military tensions with Cuba subsided, the sense of its strategic value subsided only to be rekindled in the second decade of the 21st Century as China threatens US Hegemony in this area and around the world. The Middle Kingdom continues to make financial, economic, and political inroads in Latin America and the Caribbean. Puerto Rico has become

“America’s Last Fortress” in the area as Alexander Odishelidze has explained in a recent book with that title:

China’s Belt and Road initiative is on the way... [f]or China to have unrestricted access to the rest of the world. At focus is America’s last fortress, Puerto Rico which sits primely at the southern entrance to the Caribbean from the Atlantic Ocean. The only way China can exercise influence in Puerto Rico—and move freely around the globe—is if Puerto Rico became an independent nation.

Today America’s security again hinges on retaining Puerto Rico, thus statehood looms as the surest way to the permanence of US presence in the Island.

Lastly, on the global scene, the outrageous neglect of the US Congress towards Puerto Rico’s status issue has become a propaganda windfall for Cuba, Venezuela, Nicaragua, Russia, and China, just to name the luckiest.

II

There are also short-term reasons for the Puerto Rico statehood push

On the national scene, the issue has become conflated with the DC statehood push especially since some Democrats envisioned that the admission to the union of the Capital and the unincorporated territory could be a way to secure their control of Congress for decades. Whether in the future that would be the case or not, almost all Democrats presently would vote for it or are inclined to do so. The Republicans seem to also have bought the narrative and, both in the House and in the Senate, have almost unanimously opposed any bill that would consult the American Citizens residing in the territory, even if the results are not binding, lest the Democrats’ dream becomes a reality.

But the Democrats seem to be pushing on with the bill in the House, maybe fearing that they could lose their majority in the midterm elections. Hence, they are trying to rush the passage of the bill before November. That way, they would send it to the Senate to put the Democrats in that body in a position of being able to concur with the bill in December, if the result of the election makes it politically advisable or dump it if not.

In Puerto Rico, where elections are run by local parties that are defined mostly by their advocacy of status alternatives and not by their position on the liberal-conservative continuum or the Rep-Dem split, any talk of a congressionally sponsored referendum or plebiscite on the status of the island arouses passions, proliferates debates, heightens hopes, deepens cleavages and stimulates agitated rhetoric. Some parties see advantages in bringing up the issue during the election, mostly the pro-statehood New Progressive Party and the Independence party whose very militant bases get mobilized by this issue. While others see the issue as a way to divide their hosts (the pro-status quo Popular Democratic Party) or divert attention from the really important issue, be it class struggle against privatization (in the case of the far-left Citizen’s Victory Movement) or public morality (in the case of the fundamentalist Project Dignity).

Citizen’s Victory Movement, for example, has lobbied Puerto Rican Alexandria Ocasio Cortes not to favor the bill because it lacked the populist appeal of a Status Convention that a previous version had. Since Steny Hoyer, majority leader in the House had been championing the bill, in August,

Alexandria Ocasio Cortes, (D, NY) and the squad withdrew their support for the Bill to erode Hoyer's prestige as well as Nancy Pelosi's, by a ricochet.

Legislative track

The current effort to get Congress to legislate a binding referendum in which the American voters residing in Puerto Rico would be able to choose, or reject, statehood was begun by Darren Soto a Puerto Rican who represents Florida's Ninth District in Congress. On March 2, 2021, he introduced a bill (HR.1522, 117th Congress) precisely for that purpose. It called for a referendum to be held as soon as the election board could organize to vote up or down on statehood. A victory for statehood would immediately set in motion the process of admission and even when Congress would still have to legislate an Act of Admission the decision to make Puerto Rico a state would be considered settled.

As soon as the HR-1522 was introduced, strong opposition to its approval emerged coming especially from those, both in the territory and in Congress, who allege that Puerto Rico should not become a state because Puerto Ricans are not and cannot become real Americans, because they are Puerto Ricans. For those opposing the bill, there needed to be other options. So, two Puerto Rican members of the New York delegation in the House who are known to lean toward the independence or free association options, Nydia Velazquez (D, NY) and AOC came to their rescue. They introduced an alternate bill (HR-2070, 117th Congress) to block expedited consideration of the statehood bill and complicate the issue, and slow, if not totally disrupt, the process of approval. This alternate bill did not offer a binding vote on statehood but provided for a Status Convention in Puerto Rico and the appointment of a consulting Congressional Joint Committee to help elaborate alternatives to statehood. Although these were left unmentioned it was clear from the context that these alternatives would be variations of two options: Sovereignty in Free Association with the United States (following the models of currently associated republics of Palau, the Marshall Islands, and Micronesia) and Full Independence (following the model set by the Philippines in 1946 and Cuba in 1902). In a public hearing held on June 16, 2021, both bills were considered in sort of a duel, and both ended up dead.

But from the ashes of these two bills, the main legal advisors to the HR-1522 (statehood) camp, Professor Christina Ponsa-Kraus, and the HR-2070 (sovereignty) camp, Professor Rafael Cox-Alomar, elaborated a hybrid bill and offered it to Rep Raul Grijalva (D, AZ.) chair of the Natural Resources, the main committee of jurisdiction. After polishing this so-called compromise draft, it was introduced on July 16, 2022, as HR-8393, 117th Congress. It dispensed with the Status Convention and the formulation of "options," kept the offer of statehood and the binding nature of the referendum but altered the ballot to include the Sovereignty in Free Association and Independence besides statehood and provided for a run-off vote (*ballotage*) if no option got a majority in the first round. HR-8393 was able to bring together Nydia Velazquez and Puerto Rico's Resident Commissioner, Jennifer Gonzalez, as cosponsors, thus it was labeled "the compromise bill". But a consensus was elusive both in the Island and in Congress.

In Puerto Rico, the Popular Democratic Party, a traditional defender of the status quo, opposed it vehemently alleging that it excluded from the ballot the alternative to leave things as they are which is preferred by a large traditionalist sector in that party. Indeed, the status quo is also very much in the liking of those big corporations that have used the island as a tax haven or hope to do

so in the future. Of course, there is another sector of the party, larger or larger than the first which does want a change to the status quo but not towards statehood or independence but some ill-defined and unclear form of association in which Congress would rule over Puerto Rico but not based on the Territory Clause. Most legal scholars consulted have in essence opined that such type arrangements are not constitutionally viable.

Notwithstanding this opposition, the compromise bill was brought to a markup session on July 20, 2022. The Popular Democratic leadership, using paid conservative lobbyists, was able to recruit exclusionist republicans in the committee to torpedo the bill with arguments dripping with animus against Puerto Rico and the Puerto Ricans. At the other extreme of the spectrum, the squad bought their contradictory argument that the bill fails to provide for the elaboration of unspecified options.

Notwithstanding these obstacles, the compromise bill was approved and ordered to be reported to the House on a 25 to 23 vote, with all the Democrats in the committee voting in favor, except for Rashida Talib and Chuy García who joined all the Republican members of the committee in voting against it in an admirable example of the meeting of the extremes.

Supporters of the bill hope to bring it to a vote in the floor of the House in September when Congress reconvenes if they are sure they can muster the votes to pass it. If the bill is approved in the House, it would still have to pass the Senate before the end of the term in December, something which seems highly unlikely given the opposition to the bill that Senator Manchin has already expressed. But it is not impossible if the results of the election make it convenient for the Democrats, as I explained above.

It is clear that, whatever happens in Congress with the current compromise bill, a bridge has been crossed in the century old struggle to end the territorial status. If the bill passes and is signed into law change could come swiftly and Puerto Rico could become a state in a few years. But the beneficial impact on businesses and the economy would be felt immediately. If the bill is not passed, you can be sure that a similar bill as well as bills resembling HR-1522 (Statehood, yes or no) and HR-8393 will be introduced in the 118th Congress and the following congress until the matter is resolved.

The overwhelming majority of American citizens residing in Puerto Rico want to end the territorial condition. Every party including those that favor the status quo wants the US-Puerto Rico relation to be outside the purview of the Territory Clause of the Constitution (US Const, Art. III, Sec 2), and every party advocates such policy. Among the options, statehood is the clearly preferred option, and its support is growing. It has beaten all contending options in the last three locally sponsored plebiscites.

III

As for me, I also favor statehood for Puerto Rico. It is the only real alternative to the territorial condition.

Puerto Rico has been under the sovereignty and powers of Congress for 124 years, more than half the life of the Republic. Puerto Ricans, both on the island and on the mainland, are today and have been for a long time an integral part of a remarkably diverse America. Over the years they gallantly fought shoulder to shoulder with their fellow American citizens from other states in all the nation's

wars or armed conflicts. They have offered their lives in these conflicts at a higher per capita rate than most states. And they remain ready to risk life and limb to defend America. Currently, there are more than 10,000 Army Reserve and Army or Air Force National Guardsmen in Puerto Rico who are routinely deployed overseas whenever needed. They should be able to participate in the election of their Commander in Chief and elected representatives and senators to the Congress that passes the laws that govern them.

The political, administrative, and legal institutions of Puerto Rico (with the possible exception of the Civil Code which, like Louisiana's, was originally based on the Napoleonic Code) have been established under US rule and following American models and patterns. There is no aspect of institutional and economic life in Puerto Rico that is not integrated into the American systems, mostly, as if it were a state. Residents of Puerto Rico see the mainland as their main referent past its shores for travel, entertainment, education, religion, employment, health and every other aspect of their lives.

Trying to separate Puerto Rico and the Puerto Ricans to make the Island an independent nation or even an associated republic would cause a major disruption in the lives of its residents and violence to their security, institutions, expectations, and everyday life. When you analyze it realistically, separation is simply inconceivable.

The social upheaval caused by the expectation of separation would overwhelm society. Mass migration to the states would decimate the population of the Island to a point where social life and the economy would not be able to subsist. As a critical mass of consumers is lost, many businesses would have to close or declare bankruptcy. The value of properties will collapse and banks holding mortgages on them would fold. Local government collections from taxes and other sources will force a reduction of public services and security, and promptly Puerto Rico would default on the service to the public debt sending the government into bankruptcy once more. The Island under such a state of affairs would become fertile ground for activities of South American narco-gangs and the spawning of ground radical populist and nationalist anti-American demagogues. The Chinese government would be quick to take advantage of such a situation.

Puerto Ricans on the Island have been American citizens for 105 years. Should these American citizens be entitled to have the territory they call home become a state like so many territories before them? Congress cannot continue to dismiss their plight based on obsolete reasoning regarding the races and ethnicity of the population expressed in arcane cases that should be promptly overturned. (See Justice Gorsuch's concurring opinion in *Vaello Madero*)

Statehood would make Puerto Rico's economy grow and the economically dependent sector of the population shrink. The territory has over one hundred pharmaceutical, biotech, and aerospace facilities which would boom if Puerto Rico were to become a state according to the experience of the last states admitted, Alaska and Hawaii which had a comparable income per capita to Puerto Rico when they were admitted but now have at least a threefold advantage over it. The tourist industry in Puerto Rico has a lot of space to grow and thrive as it did in Hawaii. Economic growth in Puerto Rico under statehood would mushroom bringing more business to mainland companies.

Finally, I appeal to those members of Congress who still may have doubts or outright oppose admitting Puerto Rico to the Union at this time, to reconsider their position. The question of statehood is not merely an issue in or about Puerto Rico, it is squarely an American issue. Persons born and residing in Puerto Rico are natural-born citizens of the United States. Our

nation and its progress have been built literally by making new states from territories where Americans reside. Doing such, America has defined its contours, population, moral and strategic values, and its defenses. At this time, Puerto Rico is essential for US national security. Opening political spaces where persons with anti-American sentiments, on the Island or the mainland, can foment a movement away from the US and toward independence for Puerto Rico, is playing with fire and putting all of America at risk. The road to strength is to unite, not to exclude. Accordingly, on which side of the inclusiveness frontier should you place Puerto Rico?