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THE COMMONWEALTH OF PUERTO RICO

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THE COMMONWEALTH OF PUERTO RICO

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Puerto Rico was acquired by the United States from Spain in 1898 as a result of the Spanish-American War. Many features of its current commonwealth status developed gradually from that initial moment, until it crystallized in its present form in 1952.

Those developments began in 1900 with the US Foraker Act, which established a civilian government in Puerto Rico and provided for its economic relationship with the United States. Subsequent events included the passage of the Jones Act of 1917, which extended US citizenship to all citizens of Puerto Rico; the provision for an elected governor in 1947; and the authorization to draft a constitution in 1950.

In the meantime, from 1901 to 1922, the Supreme Court of the United States decided a series of cases relating to Puerto Rico and other US territories. Collectively known as the “Insular Cases,” these decisions provided the basic constitutional framework for the current relationship between the United States and Puerto Rico. In essence, the Insular Cases established that Puerto Rico should be considered an “unincorporated territory,” defined as one “belonging to, but not a part” of the United States.

According to the Supreme Court, the US Congress has plenary powers over the territories under the Territorial Clause (Article IV, Section 3, clause 2) of the US Constitution, which provides that Congress “shall have power to dispose and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.” By virtue of those powers, Congress may legislate for the territories to provide for their governments and other affairs. All the laws referenced above were adopted pursuant to that constitutional grant of power.

THE PROCESS LEADING TO THE ADOPTION OF THE COMMONWEALTH OF PUERTO RICO

By 1950, these developments were deemed insufficient by most of the Puerto Rican population, which aspired to a greater degree of self-governance. As a result of internal demands and international pressures, a process was initiated that would lead to the establishment of what is known as the Commonwealth of Puerto Rico.

The process formally commenced in 1950, when Congress approved Public Law 600, authorizing Puerto Ricans to adopt their own internal constitution. A constitutional convention was assembled in Puerto Rico, with representatives of almost all political parties then existing in the islands. The Puerto Rican Independence Party chose not to participate. The convention produced a constitutional text that was endorsed by a majority of Puerto Rican voters in a referendum.

As required by Public Law 600, the constitution was forwarded to the president of the United States, who in turn submitted it to Congress, who approved it with amendments. The Puerto Rican Constitutional Convention ratified the amendments (with voters sanctioning them in the general election held later that year to elect the new government), and the new constitution of Puerto Rico was proclaimed on July 1952. The constitution adopted two new official names for the Puerto Rican polity: in Spanish, it was called the Estado Libre Asociado de Puerto Rico and, in English, the Commonwealth of Puerto Rico.

The 1952 constitution provided for the structure of the government of Puerto Rico as it currently exists. It contains a bill of rights guaranteeing civil and political rights, similar to those found in the US Constitution, and

some social and economic rights, such as the right to education and rights related to employment.

Public Law 600 repealed all provisions of the Foraker and Jones acts that referred to the internal organization of the Puerto Rican government, but it left in effect the provisions relating to the basic relationship between the United States and Puerto Rico. These were reorganized in a new Puerto Rico Federal Relations Act, which is still in effect.

CONTENT OF THE ARRANGEMENT

The exact distribution of respective powers between the two governments is not specified in any single document. It is, rather, a composite of the provisions of the US Constitution, the Puerto Rico Federal Relations Act, the Constitution of Puerto Rico, relevant federal legislation, and federal case law relating to federal–territorial and state–federal relations. The general understanding and practice are that the Puerto Rican government may exercise general powers of government over matters relating to local taxes, the organization of state and local (or municipal) governments, Puerto Rican elections, the Puerto Rican judiciary, education, health, security, welfare, the environment, family law, criminal law, contracts, the regulation of commerce, transportation, and corporations, and other areas pertaining to local affairs.

These powers are not by any means exclusive. They may be and are conditioned by the powers of the US federal government to legislate on matters under its jurisdiction in accordance with US constitutional jurisprudence. The immense power acquired by the federal government as a result of the Supreme Court’s expansive interpretation of several provisions of the US Constitution has significantly eroded the local powers of the states in many areas, and the federal government has moved to regulate education, health, internal security, welfare, the environment, and other areas traditionally left to them. In practice, this same effect has been visited upon the US territories, including Puerto Rico, so that many local powers have been gradually diminished.

The US government further retains exclusive control over foreign relations, military affairs, international commerce, immigration and naturalization, the currency, postal matters, maritime jurisdiction, patents, and bankruptcies. Moreover, under its so-called “plenary powers,” Congress

may treat the territories, including Puerto Rico, differently than it does the states.

The US Constitution applies to Puerto Rico, with some exceptions. All federal legislation also applies to Puerto Rico, unless otherwise indicated by the US Congress, and treaties signed and ratified by the United States are binding there to the same extent as in the states.

Residents of Puerto Rico are exempt from paying federal income tax, although federal Social Security, unemployment, and other taxes are collected in the islands to the same extent as in the states. Duties collected under US internal revenue laws on goods produced in Puerto Rico and transported to the United States or consumed in the islands are returned to the Puerto Rican government.

People born in Puerto Rico automatically become US citizens. They may enter freely into the states, establish residence, and work there, and they may hold US passports to travel abroad. They are also eligible for US military service and, when military service was obligatory in the United States, were subject to the draft. Those residing in Puerto Rico qualify for many federal entitlements and welfare benefits.

Puerto Rican residents cannot vote for the president of the United States or elect voting representatives to the US Congress. A single resident commissioner, who sits in the House of Representatives, represents Puerto Rico in Congress. The resident commissioner may be assigned to congressional committees but cannot vote in the full House even on legislation affecting Puerto Rico.

The US government has no single official representative in Puerto Rico. Rather, it operates through the many federal agencies that have offices there dealing with a variety of federal regulatory, administrative, and quasi-judicial functions. A US military presence in the islands is significant, although declining, by way of military bases, surveillance infrastructure, and recruiting posts.

Although Puerto Rico has a local judicial system, a federal US court system operates there in very much the same fashion as in the states. The Federal District Court for the District of Puerto Rico is the court in which federal legal proceedings are begun or first heard. Like other US federal courts,

it has limited jurisdiction, as specified in the US Constitution. Its decisions may be appealed to the Circuit Court of Appeals for the First Circuit, located in Boston, Massachusetts, whose decisions may, in turn, be reviewed by the US Supreme Court.

These federal courts may invalidate any law, regulation, or administrative action of the Puerto Rican government that is contrary to any provision of the constitution, laws, regulations, or treaties of the United States. The Supreme Court of the United States may also review, in appropriate cases, final decisions of the Supreme Court of Puerto Rico involving the interpretation or application of federal law.

Finally, the US government conducts international relations. Puerto Rico's participation in international and regional bodies has been very limited.

CONDITIONS THAT MADE THE ARRANGEMENT POSSIBLE

Several conditions made possible the arrangement that finally took form in the 1950s. Among them was the global decolonization wave that erupted after World War II, which put international pressure on the United States to address the situation of its colonial possession in the Caribbean as the country sought to play a more prominent role in world affairs. Internal pressure also rose, fueled mostly by the growth of an independence movement and calls from other sectors in Puerto Rican society for more self-governance. The experience of World War II had brought to the fore the strategic importance of Puerto Rico in the region, strengthening awareness in US government circles of the need for stability in its territorial possession.

Another facilitating factor was the emergence of the Popular Democratic Party, a strong left-of-center political party that came into power in the late 1940s on a platform for social, economic, and political reform. Its charismatic leader, Luis Muñoz Marín, was able to forge alliances with the Democratic Party in the United States and to link the adoption of the commonwealth formula with social and economic progress in the Puerto Rican popular imagination.

JUDICIAL INTERPRETATION OF THE ARRANGEMENT

No express provision was made in Public Law 600 or in the Puerto Rico Federal Relations Act regarding judicial interpretation of the terms of the

commonwealth arrangement. It is understood, however, that any controversy regarding the relationship between the United States and Puerto Rico is, by definition, a federal question that falls under the jurisdiction of US federal courts, with the US Supreme Court having the final say.

CONCLUSION

Two main criticisms leveled at the commonwealth status pertain to the process that produced the Puerto Rican model: (a) the current arrangement was not the result of a negotiation between two parties, conducted under conditions of material or even formal parity, and (b) the referenda held to ratify Public Law 600 and the Constitution of Puerto Rico offered voters the option only of accepting or rejecting the proposal, without including other choices, such as full independence or full integration into the United States. Both criticisms have led to the generalized claim that Puerto Rico has never fully exercised its right to self-determination.

In terms of substance, the principal critique has been that the status of Puerto Rico still reflects a condition of political subordination rather than a system of political autonomy. Although for some time the current commonwealth status enjoyed the support of a majority of the population, these dissatisfactions, conjoined with the emergence of serious social and economic problems, have generated increasing calls for substantial changes. In fact, a recent referendum organized by the Puerto Rican government (without a previous commitment from the US government) resulted in the rejection of the commonwealth agreement by 54 percent of voters.

Two recent developments have deepened these critiques. In June 2016, the US Supreme Court decided that Puerto Rico's ultimate sovereignty laid in the US Congress for the purposes of the double jeopardy clause of the US Constitution. This means that Puerto Rico cannot claim the status of "separate sovereignty" enjoyed by the states or by Indian tribes in the federal system in this context. Moreover, also in June, the US Congress established a fiscal control board to oversee Puerto Rico's finances and budgetary processes, in effect overriding several provisions of the Constitution of Puerto Rico and taking control of important aspects of the Puerto Rican government. These actions have been received in Puerto Rico as severe blows to the notion of self-government.

In general, four main solutions have been proposed: (a) full independence; (b) becoming a state; (c) acquiring a status of sovereignty in close, formal association with the United States; or (d) attaining some form of enhanced autonomy (whose features are not clearly defined) that somehow addresses the democratic deficiencies perceived in the current arrangement.

In other words, the claim for self-determination of Puerto Ricans has not subsided. The question of the political condition of Puerto Rico is still a burning issue that consumes enormous amounts of attention, energy, and resources, without a resolution in sight.

Taking into account the Puerto Rican experience, any territory that is considering a self-governance arrangement is extremely well advised to conduct comprehensive negotiations, which, in the long term, will enhance the legitimacy of the arrangement. The process should provide concerned parties with several acceptable options. The self-determining entity should feel it really has a choice, and that no legitimate solutions are being excluded. A mere choice of yes or no—especially if the terms are dictated by one of the parties—will most likely end up being unsatisfactory.

Finally, to contribute to the long-term viability of the solution, the process should include a discussion, as precise as possible, of the content of the proposed alternatives and of the transition mechanisms needed to achieve the desired outcome.

ABOUT THE AUTHOR

Efrén Rivera-Ramos is a full professor of law and former dean at the University of Puerto Rico, where he teaches constitutional law, jurisprudence, and law and culture. He obtained a BA in political science and a juris doctor from the University of Puerto Rico, an LLM at Harvard Law School, and a PhD in law from University College London. He has been a visiting professor at Yale University, the University of Ottawa, Pompeu Fabra University in Barcelona, and the Autonomous University of Barcelona, and has lectured widely in the United States, Europe, and Latin America. Rivera-Ramos is a recognized expert on the legal and political relationship between the United States and Puerto Rico.

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