Autonomía Prestada, Soberanía Negada

The Puerto Rico Federal Relations Act of 1950 and the Legal Fiction of Commonwealth Status

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ABSTRACT

This white paper examines the constitutional and democratic foundations of Puerto Rico's political status, focusing on the Puerto Rico Federal Relations Act of 1950 and the continued operation of the territorial framework under Article IV of the United States Constitution. While the Act is often understood as establishing a form of autonomous "commonwealth" governance grounded in mutual consent, this paper argues that it did not alter the fundamental allocation of authority. Instead, it preserved congressional supremacy while reframing territorial subordination in the language of autonomy.

To evaluate this structure, the paper distinguishes between constitutional legality and democratic legitimacy and develops a five-element framework for assessing the legitimacy of governance under conditions of external plenary power. Under this framework, a political system is democratically legitimate only where authority is inherent, participation is equal, autonomy is meaningful, consent is ongoing and revocable, and political equality is substantive.

Applying this framework, the paper concludes that Puerto Rico's current status fails to satisfy the requirements of democratic legitimacy. These failures are not incidental or the result of policy deficiencies, but structural features of a system in which governing authority remains externally derived and ultimately revocable. As a result, the "commonwealth" designation functions as a legal fiction, conveying the appearance of self-government while preserving the underlying reality of territorial subordination.

The paper further argues that permanent territorial status is inherently unstable and democratically incoherent. So long as external plenary authority remains intact, the structural conditions necessary for legitimate self-government cannot be satisfied. Only political arrangements that eliminate this external authority or replace it with equal political incorporation are capable of resolving the identified democratic deficit.

In advancing this analysis, the paper highlights a broader limitation within constitutional doctrine: the ability to authorize systems of governance that are legally valid yet structurally inconsistent with democratic principles. Puerto Rico's status thus serves not only as a case study in territorial governance, but as a lens through which to examine the relationship between constitutional power and democratic legitimacy.

INTRODUCTION

Puerto Rico's political status has long been described in the language of autonomy, consent, and self-government. But the persistence of those terms has obscured a more basic constitutional reality: Puerto Rico remains subject to the plenary power of Congress under Article IV of the United States Constitution. The central question, therefore, is not simply what Puerto Rico's status is called, but whether a politically and culturally distinct people may remain permanently subject to external plenary authority, while still claiming democratic legitimacy. That question cannot be answered by rhetoric alone, nor by resting on the formal existence of local institutions. It requires a closer examination of the relationship between sovereignty, consent, and the source of governing power.[1]

The modern legal architecture of Puerto Rico's status rests on a category born of imperial expansion, "[t]he United States entered the twentieth century as a colonial power" and continues to assert colonial authority over Puerto Rico. Efrén Rivera Ramos, Deconstructing Colonialism 104 (2001). The Insular Cases supplied the constitutional framework for that development by creating the category of the unincorporated territory, territories that belong to the United States but are not fully incorporated into it. *Downes v. Bidwell*, 182 U.S. 244, 287 (1901). Within that framework, Puerto Rico could be governed by Congress without full incorporation into the constitutional order on equal terms with the states. The result was not a temporary anomaly, but a durable structure of unequal political membership: territorial subjection without statehood, citizenship without full representation, and local self-government without ultimate sovereign authority.[2]

The Puerto Rico Federal Relations Act of 1950 did not dismantle that structure. To the contrary, it rearticulated it in a more politically acceptable vocabulary. Public Law 600 declared that, "fully recognizing the principle of government by consent, this Act is now adopted in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption", this language has often been invoked to suggest a bilateral transformation in Puerto Rico's relationship with the United States. Act of July 3, 1950, ch. 446, § 1, 64 Stat. 319, 319. Yet the statute itself preserved Congressional review of the Puerto Rico Constitution, continued the broader territorial statutory framework, and nowhere transferred

[1] See Efrén Rivera Ramos, Foreign in a Domestic Sense 104-105 (Christina Duffy Burnett & Burke Marshall eds., 2001).
[2] See Jorell Meléndez-Badillo, Puerto Rico: A National History 16-17, 80-90, 134-143 (2024).

sovereignty away from Congress.[3] What changed was the form of administration; what did not change was the location of ultimate authority.

That point was stated with exceptional clarity by the Supreme Court in *Puerto Rico v. Sánchez Valle*. There, the Court held that Puerto Rico and the United States are not separate sovereigns for purposes of the Double Jeopardy Clause because the island's prosecutorial authority does not arise from an independent source. The court made clear that Puerto Rico's constitutional order exists, as a matter of federal constitutional law, within a chain of delegated authority whose source remains Congress. A political system built on externally conferred and revocable authority may be lawful under existing doctrine; however, the harder question is, whether it is democratically legitimate. *Puerto Rico v. Sánchez Valle*, 579 U.S. 59, 68, 75–76 (2016).

That question becomes sharper, not weaker, when applied to Puerto Rico. Puerto Rico is not merely an administrative unit or a geographically convenient possession. It is a historically continuous political community with a distinct national identity, a developed collective memory, and a long record of resistance, accommodation, and self-definition under colonial rule.[4] Its people have persisted as a people notwithstanding the legal categories imposed upon them – this fact matters. When a culturally distinct people is denied equal participation in the sovereign institutions that govern it and remains subject to an authority it did not originate and cannot unilaterally revise, the issue is no longer one of institutional design alone. It becomes a question of democratic legitimacy.

This white paper argues that the Puerto Rico Federal Relations Act of 1950 preserved Congressional supremacy under the language of autonomy and thereby entrenched, rather than resolved, Puerto Rico's subordinate territorial status. That arrangement creates a structural democratic deficit. A political order in which a people remains permanently subject to external plenary power cannot be democratically legitimate unless the authority exercised over that people is grounded in inherent political power, meaningful and ongoing consent, equal participation in the sovereign decision-making body, secure and non-revocable self-government, and a genuine capacity to alter or exit the relationship. Puerto Rico's current status fails that test. And once that failure is recognized, the issue is no longer whether the "commonwealth" formula

[3] See Act of July 3, 1950, §§ 2–4, 64 Stat. at 319; and 48 U.S.C. § 731 (1917).
[4] See Efrén Rivera Ramos, Foreign in a Domestic Sense 110-111 (2024).

is politically useful or rhetorically attractive. The issue is whether the Constitution can coherently tolerate the permanent governance of a distinct people under a regime of delegated autonomy and external supremacy. This paper answers that question in the negative.

I. CONSTITUTIONAL FOUNDATIONS OF TERRITORIAL POWER

A. Article IV and Plenary Authority

The constitutional foundation of Congress's authority over Puerto Rico lies in the Territorial Clause, which provides that "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." U.S. Const. art. IV, § 3, cl. 2. Read straightforwardly, the Clause places the territories within a framework of federal legislative control rather than coequal sovereignty. Puerto Rico's contemporary political institutions therefore exist within a constitutional structure in which Congress retains ultimate authority.

That structure is reflected in the federal statutory framework still governing Puerto Rico. Title 48 continues to codify Puerto Rico's political relationship to the United States as one administered through federal territorial law rather than through a distinct constitutional status. 48 U.S.C. § 731 (1917). The continuing placement of Puerto Rico within the Territories and Insular Possessions title underscores a fundamental continuity: whatever internal powers Puerto Rico may exercise, those powers operate within a legal regime grounded in Congressional authority rather than mutual sovereignty.[5]

Public Law 600 did not displace that framework. Although it authorized Puerto Rico to draft and adopt a local constitution, Congress retained review authority and preserved the broader territorial statutory structure. Act of July 3, 1950, ch. 446, §§ 2–4, 64 Stat. 319, 319. The resulting arrangement expanded the island's capacity for internal administration, but it did not relocate the source of ultimate power. In constitutional terms, Puerto Rico remained where Article IV had always placed it, under the authority of Congress.

As Cruz-Martínez explains, Puerto Rico's continued placement within the territorial framework reflects the persistence of colonial governance under the Territorial Clause rather than

[5] See José Javier Colón Morera, Rafael Albarrán & Angel Israel Rivera, The United States Congress and the Puerto Rican Political Status Question, 26 Caribbean Stud. 363, 363–64 (1993); and Pedro A. Cabán, Puerto Rico: State Formation in a Colonial Context, 30 Caribbean Stud. 170, 170–72 (2002).

a transition to sovereign equality.[6] Cabán similarly characterizes Puerto Rico's political development as "state formation in a colonial context," where institutional growth occurs without the transfer of sovereign authority. Pedro A. Cabán, Puerto Rico: State Formation in a Colonial Context, 30 Caribbean Stud. 180 (2002).

This baseline matters because it defines the terms of every later debate about Puerto Rico's status. If Congress is the ultimate source of territorial power, then the existence of local self-government does not itself answer the deeper question of sovereignty. It instead raises a further inquiry, whether delegated local governance can amount to meaningful political self-determination where ultimate authority remains external.

B. The Insular Cases and the Doctrine of Incorporation

Congress's Article IV authority over Puerto Rico was given more specific constitutional shape through the Insular Cases. Those decisions created the category of the unincorporated territory and made possible a system in which the United States could exercise sovereignty over Puerto Rico without fully incorporating it into the constitutional order. As Rivera Ramos explains, "if before those cases were decided there were no such things as 'unincorporated territories,' after their rendition, the American political and constitutional world would include such entities", the Court did not merely describe a preexisting status; it helped create a new legal and political category. Efrén Rivera Ramos, Foreign in a Domestic Sense 104, 107 (2001).

That category carried concrete constitutional consequences. Puerto Rico could "belong" to the United States without being fully treated as part of it. Justice Brown's description in *Downes v. Bidwell* of Puerto Rico as "a territory appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution" became one of the doctrinal foundations for that arrangement. 182 U.S. 244, 287 (1901). Later cases, including *Balzac v. Porto Rico*, gave doctrinal force to the idea that only certain "fundamental" constitutional protections apply of their own force in unincorporated territories. 258 U.S. 298, 312–13 (1922).

The result was a constitutional structure of partial inclusion. Puerto Rico became subject to United States authority while remaining outside the full constitutional equality enjoyed by the states. Rivera Ramos captures the larger effect well, the doctrine legitimized the acquisition and

[6] Gibrán Cruz-Martínez, Puerto Rico, Colonialism, and Neocolonialism 8-12 (2019).

governance of lands inhabited by peoples "who, as in the case of Puerto Rico, viewed themselves as distinct nations," while normalizing their treatment as colonial dependencies. Efrén Rivera Ramos, Foreign in a Domestic Sense 104, 107-108 (2001). This was not a minor technical distinction. It created what he later describes as a "partial democracy," one in which rule-of-law discourse and individual rights coexist "with a situation of collective political subordination." *Id* at 109.

As Henning observes, Congress extended citizenship in Puerto Rico as a mechanism to reinforce colonial control, while deliberately withholding the full rights and privileges associated with political membership, thereby maintaining a system in which formal inclusion coexists with substantive inequality.[7]

C. Citizenship Without Sovereignty

The extension of United States citizenship to Puerto Rico did not resolve the structural inequalities embedded in territorial governance. Rather, as Henning explains, citizenship functioned within a framework in which political inclusion was formally recognized but substantively limited, leaving intact the broader system of external control and unequal political membership.[8]

The grant of U.S. citizenship to Puerto Ricans did not make them political equals; rather, it fit within an imperial framework in which nonwhite peoples could be incorporated without being fully admitted into equal political membership[9] – a pattern consistent with broader historical practices in which the United States has extended formal inclusion to racialized minority groups while maintaining unequal distributions of political power. Puerto Rico's residents could be citizens and still remain outside the full structures of representation and constitutional parity. The doctrine of incorporation thus made possible a distinctive constitutional arrangement, federal sovereignty without full inclusion, citizenship without equality, and local governance without ultimate political power.

This dynamic reflects a deeper distinction between formal status and actual political power. Citizenship, in this context, did not operate as a mechanism of incorporation into a system of equal sovereignty. Instead, it became a feature of a territorial framework in which rights and

[7] See Maye Lan Henning, The Empty Gift 1-2 (2017).
[8] See *Id*. at 63-68
[9] See Pedro Cabán, Puerto Ricans as Contingent Citizens, 29 Centro J. 238, 240–41 (2017).

participation remained unevenly distributed. Puerto Rico's residents could be citizens of the United States while still lacking full representation in the institutions that govern them and without possessing ultimate authority over their political system.

The Court made the same broader point in *Puerto Rico v. Franklin California Tax-Free Trust*. There, Puerto Rico argued that it could enact its own municipal debt restructuring scheme notwithstanding the federal Bankruptcy Code. The Court rejected that position and held that Puerto Rico remained bound by the federal statutory framework. *Puerto Rico v. Franklin Cal. Tax-Free Trust,* 579 U.S. 115, 122–23 (2016). The decision demonstrates that Puerto Rico's legislative authority, however substantial in local terms, operates within a hierarchy in which Congress may displace or foreclose local action.

Cabán similarly notes that Puerto Ricans occupy a position of contingent citizenship, in which formal membership does not translate into full political equality within the constitutional order.[10] This condition reflects a system in which political identity is shaped by external authority rather than grounded in an independent sovereign framework.

Citizenship, therefore, did not transform Puerto Rico's constitutional status. It functioned as an instrument within an existing system of governance, one that combined elements of inclusion with persistent structural inequality. The result is a political condition in which citizenship coexists with subordination, and in which formal membership does not eliminate the absence of sovereign authority.

D. Structural Consequences of Territorial Governance

The combined effect of Article IV, the Insular Cases, and modern doctrine is a system with three defining structural consequences, (1) unequal political participation, (2) conditional constitutional inclusion, and (3) non-sovereign self-government. These are not incidental defects, they are the ordinary consequences of a political arrangement in which governing power remains external.

First, Puerto Rico exists within a system of unequal participation in the institutions that govern it. Its residents are U.S. citizens, yet they lack voting representation in Congress and cannot vote for the President while residing on the island. Puerto Rico's representation in Congress is limited to a Resident Commissioner who may participate in committees but "cannot

[10] See Pedro Cabán, Puerto Ricans as Contingent Citizens, 29 Centro J. 238, 240–41 (2017).

cast a final vote," while there is "no representation in the Senate," even though federal legislation applies to Puerto Rico. Efrén Rivera Ramos, Foreign in a Domestic Sense 116 (2001). The result is a political system in which federal law governs without full federal representation.

Second, constitutional rights apply within a structure of differentiated status rather than equal incorporation. The doctrine of incorporation allowed the development of what Rivera Ramos calls a "partial democracy," one grounded in the language of rights and legality while preserving "collective political subordination,"[11] showing that rights discourse and democratic deficit are not mutually exclusive; in Puerto Rico's case, they coexist.

Third, Puerto Rico's local institutions operate without independent sovereignty. As Meléndez-Badillo's national history demonstrates, U.S. colonial rule did not erase Puerto Rican political identity or national self-understanding; instead, it produced a condition in which a distinct people continued to exist under a structure of external authority.[12] The legal system did not dissolve nationhood, it subordinated it.

Those consequences frame the significance of the 1950 Act. Public Law 600 did not enter a constitutional vacuum. It entered an already-existing system defined by external authority, unequal participation, and conditional inclusion. The question, then, is not simply whether the Act expanded local self-government. It is whether it altered any of those foundational structural conditions.

II. THE PUERTO RICO FEDERAL RELATIONS ACT OF 1950

A. Congressional Framing

The Puerto Rico Federal Relations Act of 1950, enacted as Public Law 600, marked a significant moment in the statutory development of Puerto Rico's political status. Public Law 600 authorized Puerto Rico to draft and adopt a local constitution and reorganize their internal government. In doing so, Congress framed the legislation in terms that emphasized autonomy, consent, and mutual agreement rather than unilateral authority. The Act provides that, "fully recognizing the principle of government by consent, this Act is now adopted in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution

[11] See Efrén Rivera Ramos, Foreign in a Domestic Sense 109-110 (2001).
[12] See Jorell Meléndez-Badillo, Puerto Rico: A National History 16–17 (2024).

of their own adoption," and describing the arrangement as "in the nature of a compact." Act of July 3, 1950, ch. 446, §1, 64 Stat. 319, 319.

At first glance, this language suggests a bilateral political relationship grounded in mutual consent. The notion of a "compact" implies a degree of reciprocity and permanence that would be inconsistent with unilateral Congressional control. Yet the structure of the Act itself does not support that interpretation. Congress retained the authority to approve, modify, or reject Puerto Rico's proposed constitution, and it did not relinquish its underlying power under Article IV. The statute therefore authorized a process of internal reorganization without altering the constitutional source of authority.

As Cabán explains, the adoption of Puerto Rico's constitution represented a stage in "state formation in a colonial context," where institutional development occurs within a framework of continued external control.[13] The expansion of local governance did not transform Puerto Rico into a sovereign political entity; it instead restructured how delegated authority would be exercised.

This distinction between internal autonomy and ultimate authority is central to understanding the Act's legal effect. Public Law 600 created space for local political organization, but it did so within a system in which Congress remained the final decision-maker. The language of consent and compact suggests transformation, but the structure of authority remains unchanged which reflects a change in form rather than a change in constitutional substance.

B. What the Act Authorized and What It Did Not

The Puerto Rico Federal Relations Act of 1950 authorized Puerto Rico to establish a local constitutional government, but it did not confer independent sovereignty. The authority exercised by Puerto Rico's government continued to derive from Congress rather than from an independent source of political power. This principle was later confirmed by the Supreme Court in *Puerto Rico v. Sánchez Valle*, which held that Puerto Rico's prosecutorial authority ultimately "flows from the Federal Government" rather than from an original sovereign source. 579 U.S. 59, 68 (2016).

[13] See Pedro A. Cabán, Puerto Rico: State Formation in a Colonial Context, 30 Caribbean Stud. 170, 170–72 (2002).

The significance of that holding extends beyond the criminal law context. It clarifies that the constitutional transformation often associated with the creation of the "Commonwealth" did not alter the fundamental nature of Puerto Rico's authority. Public Law 600 functioned as an authorization, not a recognition of inherent sovereign power. The island's institutions may exercise substantial local control, but they do so within a framework of delegated power that remains subject to Congressional revision. As Cabán explains, Puerto Rico's political development in the twentieth century reflects a form of state formation "in a colonial context," where institutional growth occurs within the limits imposed by external sovereignty.[14]

The phrase "in the nature of a compact" does not establish a binding bilateral agreement between coequal sovereigns. The statute does not create enforceable obligations that constrain Congress, nor does it provide Puerto Rico with a mechanism to enforce the terms of the arrangement against the federal government. Instead, the Act reflects an exercise of congressional authority under the Territorial Clause, permitting a degree of internal autonomy while preserving ultimate federal control.

Henning's analysis reinforces this conclusion by showing how formal political developments, including the extension of citizenship and the creation of local governance structures, can operate within, and even stabilize, a system of continued external control.[15] In this sense, the Act's grant of internal autonomy did not disrupt the territorial framework; it made that framework more administratively effective.

The key point is not that Public Law 600 failed to create local government. It is that the government it created was not sovereign. The authority of Puerto Rico's institutions remained contingent on Congressional authorization, and therefore revocable in principle, even if not exercised in practice.

C. The Myth of Mutual Consent

The idea that the 1950 arrangement represents a mutually binding compact between Puerto Rico and the United States rests on a misunderstanding of both history and law. As González-Cruz documents, Puerto Rico's incorporation into the United States was not the product of negotiated agreement but of military occupation following the Spanish-American

[14] See Pedro A. Cabán, Puerto Rico: State Formation in a Colonial Context, 30 Caribbean Stud. 170–73.
[15] See Maye Lan Henning, The Empty Gift 3-6, (2017).

War.[16] Puerto Rican representatives did not participate in the Treaty of Paris, and the island's political status was determined unilaterally by the United States.

That historical origin casts doubt on later claims of consensual political transformation. If the initial assertion of authority was not grounded in consent, subsequent statutory reforms must be evaluated against that backdrop. Public Law 600 did not erase that history; it operated within it.

Morales's account of Puerto Rico's modern political condition further underscores the persistence of this dynamic. The language of autonomy and partnership often obscures the continued reality of external control, creating what appears to be a consensual relationship while leaving underlying power structures intact.[17] The concept of "commonwealth," in this sense, functions as a descriptive label rather than a source of binding mutual obligation.

The result is a political arrangement in which the appearance of consent coexists with the persistence of unilateral authority. The Act's framing as a "compact" does not establish legal reciprocity where the constitutional structure continues to vest ultimate authority in Congress.

D. Legal Fiction as Governance

The characterization of Puerto Rico's status as a "commonwealth" can therefore be described as a legal fiction, a doctrinal construct that conveys the appearance of autonomy while preserving underlying subordination. Rivera Ramos argues that the category of the unincorporated territory itself operates as a mechanism of domination, enabling the United States to exercise sovereignty without extending full constitutional equality.[18]

Brittingham extends this critique into the contemporary context, describing Puerto Rico as a colony in all but name, where formal political structures coexist with a continuing lack of self-determination.[19] The persistence of territorial status, despite the language of autonomy, reflects a system in which legal categories mask rather than resolve structural inequalities.

This dynamic is not merely rhetorical. It has concrete legal consequences. As Colón Morera observes, the United States maintains a political relationship with Puerto Rico that reflects an unresolved tension between democratic principles and imperial governance.[20] The

[16] See Michael González-Cruz, The U.S. Invasion of Puerto Rico 1-5 (1998)
[17] See Ed Morales, Fantasy Island 25-30, 95-105 (2019).
[18] See Efrén Rivera Ramos, Foreign in a Domestic Sense 110–11 (2001).
[19] See John Brittingham, "I'd Rather Not Persist as a Colony" 1-4 (2022).
[20] See José Javier Colón Morera, Puerto Rico: A Case of American Imperial Doubts? 2-4, 7-10 (2018).

concept of "commonwealth" allows that tension to persist by framing territorial governance as compatible with self-government, even where ultimate authority remains external.

Public Law 600 thus did not resolve Puerto Rico's political status, it rearticulated it. By expanding internal governance while preserving Congressional supremacy, the Act institutionalized a system of delegated autonomy that continues to operate within the broader framework of territorial subordination.

III. COMMONWEALTH AS LEGAL FICTION

A. Absence of Independent Constitutional Category

The designation of Puerto Rico as a "commonwealth" does not correspond to a recognized category within the United States Constitution. The Constitution identifies only a limited set of political relationships: states, territories, and the federal government itself. Puerto Rico does not occupy a constitutionally distinct category alongside these forms. Instead, it remains governed under the Territorial Clause, which provides Congress with authority to regulate territories. U.S. Const. art. IV, § 3, cl. 2.

The adoption of the term "commonwealth" following Public Law 600 did not alter that constitutional reality. Congress did not amend the Constitution, nor did it create a new category of sovereignty or political status. Rather, it authorized a reorganization of Puerto Rico's internal governance within the existing territorial framework. As a result, the term functions as a statutory and political label rather than a constitutional classification.

This distinction between terminology and constitutional status is significant. In the American constitutional system, political status is tied to identifiable sources of authority. States derive their sovereignty from the Constitution itself and participate as coequal entities within the federal system. Territories, by contrast, are governed pursuant to Congressional authority under Article IV. Puerto Rico's designation as a "commonwealth" does not place it within a third category. It remains, as a matter of constitutional law, a territory subject to Congressional power.[21]

Scholars have emphasized that this ambiguity is not accidental. Rather, it reflects the development of a legal framework capable of sustaining territorial governance without requiring

[21] See U.S. Const. art. IV, § 3, cl. 2.

full incorporation or independence. Rivera Ramos explains that the category of the unincorporated territory was itself constructed to accommodate this form of political arrangement, allowing the United States to exercise authority over distinct peoples without fully integrating them into the constitutional order.[22] The "commonwealth" designation operates within that same tradition, layering new terminology onto an existing structure.

B. Delegated Authority and the Absence of Inherent Sovereignty

The absence of a distinct constitutional category for Puerto Rico's status is closely tied to a more fundamental issue: the source of its governing authority. In constitutional terms, sovereignty is defined by origin. A government that derives its authority from its own people exercises inherent sovereignty. By contrast, a government whose authority originates externally operates through delegation. Puerto Rico's political system falls within the latter category.

The constitutional principles articulated in the Insular Cases are not relics of an earlier period. Modern Supreme Court doctrine continues to reaffirm that Puerto Rico's governing authority ultimately derives from Congress rather than from an independent sovereign source. The clearest statement appears in *Puerto Rico v. Sánchez Valle*, where the Court held that Puerto Rico and the United States are not separate sovereigns for Double Jeopardy purposes because the relevant inquiry is the "ultimate source" of the prosecutorial power at issue. 579 U.S. 59, 68 (2016).

Applying that framework, the Court concluded that Puerto Rico's authority remained derivative of federal power because "Congress conferred the authority to create the Puerto Rico Constitution, which in turn confers the authority to bring criminal charges," and "[t]he island's Constitution, significant though it is, does not break the chain." *Id*. at 75–76. That language matters far beyond criminal procedure. It confirms, in the Court's own formulation, that Puerto Rico's constitutional order operates within a chain of delegated authority whose origin remains Congress.

This framework confirms that Puerto Rico's governing institutions do not possess independent sovereignty. Although Puerto Rico exercises substantial control over its internal affairs, that control exists within a system in which authority is granted rather than inherent. The

[22] See Efrén Rivera Ramos, Foreign in a Domestic Sense 107-108 (2001).

presence of a locally adopted constitution does not alter this conclusion; it reflects the exercise of delegated power within a structure defined by Congress.

This distinction between inherent and delegated authority has broader implications for understanding Puerto Rico's political status. As Cabán explains, Puerto Rico's institutional development reflects a process of state formation "in a colonial context," where political institutions emerge and evolve within the constraints of external sovereignty rather than through independent constitutional authority.[23] Puerto Rico's system of governance therefore reflects not the possession of sovereign power, but the administration of authority derived from an external source.

C. Revocability as the Defining Feature of Territorial Governance

If Puerto Rico's governing authority is derived from Congressional delegation rather than inherent sovereignty, it follows that such authority is subject to revocation or modification. This feature, revocability, is not incidental to the territorial system; it is a defining characteristic of it. Under Article IV, Congress retains the power to regulate the territories, and nothing in the statutory framework governing Puerto Rico limits that authority. U.S. Const. art. IV, § 3, cl. 2.

The implications of this arrangement are significant. A political system in which governing authority may be unilaterally altered by an external sovereign lacks the structural security associated with independent political power. Puerto Rico's constitution, while locally adopted and democratically ratified, does not derive its authority from an independent source. Instead, it exists within a framework in which Congress retains the power to amend or repeal the laws that define the island's political structure.[24]

This revocability is reflected in both doctrine and practice. As the Supreme Court's decisions make clear, Puerto Rico's authority remains part of a broader system of federal supremacy in which Congressional action can displace local governance. *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 122–23 (2016). The existence of local institutions does not eliminate this possibility; it operates alongside it.

Revocability therefore distinguishes Puerto Rico's system of governance from those grounded in inherent sovereignty. Where authority originates with the governed, core features of

[23] See Pedro A. Cabán, Puerto Rico: State Formation in a Colonial Context, 30 Caribbean Stud. 170–73 (2002).
[24] See Act of July 3, 1950, ch. 446, §§ 2–4, 64 Stat. 319, 319–20.

political organization are typically protected against unilateral external interference. In Puerto Rico, by contrast, the scope and stability of self-government remain contingent on Congressional authority.

D. The Fiction Identified

The preceding analysis demonstrates that the "commonwealth" framework does not correspond to an independent constitutional status, nor does it reflect a system grounded in inherent sovereignty or secure political authority. Instead, it describes a form of governance in which local institutions exercise authority derived from, and subject to, an external sovereign. When these features are considered together, the nature of the "commonwealth" designation becomes clear: it operates as a legal fiction.

This fiction is structural rather than merely semantic. It does not arise from imprecise language alone, but from the use of legal terminology to describe a relationship that lacks the constitutional characteristics that the terminology implies. The designation of "commonwealth" functions to reframe a territorial arrangement as something more reciprocal and autonomous than the governing legal framework permits, thereby creating a conceptual gap between how the relationship is described and how it actually operates.

In this context, the term "legal fiction" does not suggest that Puerto Rico's institutions are unreal. Puerto Rico possesses functioning democratic institutions, a locally adopted constitution, and substantial control over its internal affairs. These features are genuine and significant. The fiction lies not in the existence of self-government, but in the characterization of that system as reflecting a distinct and mutually binding political status.

In this sense, the fiction operates by conflating the existence of local governmental capacity with the existence of sovereign authority. The presence of functioning institutions creates the appearance of political independence, while the underlying legal structure ensures that such institutions remain subordinate. This distinction is critical: the ability to govern locally is not equivalent to the authority to determine the terms under which governance itself is exercised.

The term "commonwealth" suggests a relationship grounded in shared authority and mutual consent. Yet the underlying legal structure reflects a different reality. Authority originates in Congress, remains subject to unilateral modification, and operates within a constitutional

framework defined by external control. As Brittingham observes, Puerto Rico's status continues to reflect colonial dynamics despite the evolution of its formal political terminology.[25] The persistence of this terminology is not neutral. By framing the relationship in terms associated with partnership and consent, it obscures the unilateral nature of congressional authority and reduces the visibility of the underlying constitutional hierarchy.

This disjunction between terminology and structure gives rise to the legal fiction. The fiction persists because the legal system permits the coexistence of these conflicting descriptions without requiring reconciliation. So long as the formal language of autonomy can operate alongside a structure of external control, the contradiction remains embedded within the legal framework itself rather than resolved by it. The label presents Puerto Rico's status as a form of autonomous self-government distinct from territorial subordination, while the legal framework preserves the essential features of territorial governance, external authority, delegated self-government, and the absence of inherent sovereignty, while presenting those features in a more autonomous form. This continuity provides the foundation for the argument that follows; that the "commonwealth" framework operates not as a distinct constitutional status, but as a legal construct that obscures the persistence of territorial subordination. Resulting in a system in which autonomy is exercised but not possessed, and in which the appearance of political equality coexists with a continuing hierarchy of authority. This structural reality has been acknowledged even within legislative frameworks addressing Puerto Rico's status. Congressional proposals have recognized that full self-government cannot be achieved within a system in which Puerto Rico remains subject to the plenary authority of Congress under the Territorial Clause, underscoring the limits of the existing "commonwealth" framework.[26]

Recognizing this fiction is not merely a matter of definitional clarity. It has direct implications for how Puerto Rico's political status is understood and evaluated. Once the gap between language and structure is acknowledged, the central question of this paper becomes unavoidable: whether a system defined by external plenary authority and delegated self-government can satisfy the requirements of democratic legitimacy. If the answer is no, then the persistence of the "commonwealth" designation does more than misdescribe Puerto Rico's

[25] See John Brittingham, "I'd Rather Not Persist as a Colony" 1–4 (2022).
[26] See H.R. 3024, 104th Cong. § 2(10) (1996)

status; it functions to legitimize a structure that would otherwise be recognized as inconsistent with those requirements.

IV. DELEGATION, REVOCABILITY, AND THE LIMITS OF SELF-GOVERNMENT

A. Delegated Power and Its Limits

The identification of Puerto Rico's political authority as delegated rather than inherent carries with it a set of structural limitations. Delegation permits the exercise of governmental power, but it does not transfer the source of that power. The authority exercised by Puerto Rico's institutions therefore exists within boundaries defined by Congress rather than within a framework of independent sovereignty.

Modern doctrine makes these limits explicit. In *Puerto Rico v. Sánchez Valle*, the Supreme Court explained that Puerto Rico's authority must be traced to its "ultimate source," concluding that Congress remains the origin of the island's governing power. 579 U.S. 59, 68, 75–76 (2016). This formulation is critical because it confirms that Puerto Rico's constitutional order does not stand apart from federal authority. Instead, it operates within a chain of delegation that remains anchored in Congress.

The consequences of that structure extend beyond abstract questions of sovereignty. Delegated authority is, by definition, bounded authority. Puerto Rico may legislate, administer, and govern in matters of local concern, but it does so within a system in which the scope of its authority is externally defined. Where Congress has legislated, Puerto Rico's authority must yield. Where Congress has chosen not to legislate, Puerto Rico's authority exists within the space left open by federal law.

This relationship distinguishes Puerto Rico's political system from those grounded in inherent sovereignty. In systems where authority originates with the governed, local institutions derive their power from an independent constitutional source. In Puerto Rico, by contrast, the power to govern exists within limits imposed by an external sovereign. As Cabán explains, Puerto Rico's political development reflects the expansion of local governance within a continuing framework of colonial constraint rather than the emergence of independent constitutional authority.[27]

[27] See Pedro A. Cabán, Puerto Rico: State Formation in a Colonial Context, 30 Caribbean Stud. 170–73 (2002).

The limits of delegated authority therefore define not only what Puerto Rico can do, but also what it cannot do. They establish a system in which self-government is real in operation but constrained in scope, existing within boundaries that Puerto Rico itself does not control.

B. Congressional Override and Structural Dominance

The limitations of delegated authority are most clearly revealed in Congress's ability to override or displace Puerto Rico's exercise of self-government. While Puerto Rico possesses locally enacted laws and functioning democratic institutions, those institutions operate within a hierarchy in which federal authority is supreme. Where Congress chooses to act, it may preempt or nullify Puerto Rico's legislative decisions, regardless of their local democratic origin.

This dynamic is not theoretical. It is reflected in the Supreme Court's application of federal law to Puerto Rico. In *Puerto Rico v. Franklin California Tax-Free Trust*, the Court held that Puerto Rico could not enact its own municipal bankruptcy regime because federal law occupied the field. 579 U.S. 115, 122–23 (2016). The decision illustrates that Puerto Rico's legislative authority, even in areas of significant local concern, remains subject to federal control.

Congress's power of override extends beyond specific instances of statutory conflict. Under Article IV, Congress retains the authority to legislate broadly with respect to the territories. U.S. Const. art. IV, § 3, cl. 2. This authority allows Congress to redefine the scope of Puerto Rico's powers, impose new limitations, or alter existing frameworks governing the island's political and economic life. Puerto Rico's institutions therefore operate within a system in which their authority may be displaced at any time by federal action.

This hierarchy is structurally one-sided. Puerto Rico does not possess reciprocal authority to constrain Congress, nor does it participate as a coequal sovereign within the federal system. As a result, the relationship between Puerto Rico and the United States is not one of shared or divided sovereignty, but of unilateral dominance. Cruz-Martínez characterizes this arrangement as one in which Puerto Rico remains subject to the plenary authority of Congress despite the existence of local governance structures.[28]

The presence of democratic institutions does not eliminate this hierarchy. It operates within it. Puerto Rico may govern itself in many respects, but its authority exists alongside the

[28] See Gibrán Cruz-Martínez, Puerto Rico, Colonialism, and Neocolonialism1–2 (2019).

persistent possibility of Congressional intervention. This dynamic underscores the limits of delegated self-government and highlights the structural dominance of federal authority.

C. Revocability and the Absence of Entrenched Autonomy

The combined effects of delegation and Congressional override produce a further structural consequence, the absence of entrenched autonomy. Because Puerto Rico's governing authority originates in Congressional delegation and remains subject to federal supremacy, it is not secured against unilateral alteration. The island's system of self-government exists within a legal framework that Congress retains the power to modify, limit, or withdraw.

This lack of entrenchment distinguishes Puerto Rico's political system from those grounded in inherent sovereignty. In constitutional systems where authority originates with the governed, core features of political organization are typically protected against unilateral external interference. By contrast, Puerto Rico's constitutional order does not operate as a constraint on Congressional authority. Instead, it exists within a framework in which Congress retains ultimate control.

The statutory structure governing Puerto Rico reflects this reality. Congress retains the authority to amend or repeal the provisions that define the island's political system, including those that authorize its constitution and system of local governance. Act of July 3, 1950, ch. 446, §§ 2–4, 64 Stat. 319, 319–20. The continued codification of Puerto Rico's political status within Title 48 further underscores that its autonomy is not constitutionally entrenched but remains subject to legislative control. 48 U.S.C. § 731 (1917).

The absence of entrenchment has important structural implications. A system in which the scope of self-government may be unilaterally altered lacks the stability associated with independent political authority. Puerto Rico's institutions may function with continuity in practice, but their authority remains contingent in law. As Meléndez-Badillo's historical account suggests, Puerto Rico's political development reflects a persistent tension between local identity and external authority rather than the consolidation of secure self-rule.[29]

Delegation, override, and revocability define the limits of Puerto Rico's political system. These features establish that Puerto Rico's autonomy is exercised within a framework that does not secure it against external control. The result is a system in which self-government exists, but

[29] See Jorell Meléndez-Badillo, Puerto Rico: A National History 16–17 (2024).

not on a constitutionally entrenched foundation. This structural conclusion provides the final premise necessary to evaluate whether such a system can satisfy the requirements of democratic legitimacy.

V. CULTURAL NATIONHOOD AND THE STAKES OF SUBORDINATION

A. Puerto Rico as a Distinct People

Any evaluation of Puerto Rico's political status must begin with recognition of Puerto Rico as a distinct people rather than merely a geographic territory. Puerto Rico possesses a unified cultural and national identity shaped by a shared language, historical experience, and collective social development. Spanish remains the dominant language of public and private life, and Puerto Rican identity is sustained through common cultural practices, traditions, and historical memory that predate and persist beyond United States governance.

This shared identity is reinforced not only through language and tradition, but through the institutions and practices that organize daily life on the island. Puerto Rico maintains its own civil law tradition, distinct educational and cultural institutions, and a public sphere in which political discourse is conducted primarily in Spanish and shaped by local concerns. These features are not superficial markers of difference; they reflect the existence of a self-contained social and political community with its own internal logic, norms, and modes of collective organization.

This identity is not incidental to Puerto Rico's political condition. As Meléndez-Badillo explains, Puerto Rico's history reflects the development of a coherent national consciousness rooted in colonial experience, resistance, and cultural continuity.[30] Puerto Rican identity, often expressed through the concept of puertorriqueñidad, is not simply cultural expression but reflects a sustained sense of collective belonging that has endured across changing political arrangements. This identity is also shaped by the enduring psychological and social effects of colonial subordination, which complicate collective political decision-making and contribute to a sense of learned caution toward fully independent forms of sovereignty.[31] Puerto Rican

[30] See *Id*.

[31] See Denise Zubizarreta, The Modern Borikén 2–3 (2021)

nationalism has also historically positioned the island as part of a broader Latin American anti-colonial struggle, emphasizing shared identity, history, and resistance to U.S. imperialism.[32]

This enduring sense of collective identity is further reflected in the island's political life, where debates over status, governance, and self-determination are consistently framed in terms of the future of the Puerto Rican people as a people. Across ideological divisions—statehood, commonwealth, or independence—there remains a shared recognition that Puerto Rico constitutes a distinct political community whose status must ultimately be resolved in relation to its own collective will. The persistence of this shared frame underscores that Puerto Rican identity is not merely cultural, but fundamentally political in character.

The persistence of this identity is significant because it establishes Puerto Rico as a political community, not merely an administrative unit. The people of Puerto Rico did not emerge as a byproduct of U.S. territorial governance; they existed prior to it and continue to exist within it. This distinction matters because constitutional and democratic analysis must account for the existence of a governed people whose identity is not reducible to the legal structures imposed upon them. Where a distinct political community exists, principles of democratic legitimacy require more than formal governance; they require that the people subject to authority possess meaningful control over the political structures that define their collective life. To treat Puerto Rico solely as a territory is therefore to obscure the reality that what is at issue is not the governance of land, but the governance of a people with an established and enduring national identity.

The persistence of Puerto Rican national identity under conditions of external governance is not anomalous; it is a defining feature of colonial relationships more broadly. What distinguishes Puerto Rico is not the absence of nationhood, but the coexistence of a fully formed national community with a legal structure that denies it full political realization. This tension lies at the core of Puerto Rico's status and must inform any serious evaluation of its democratic legitimacy.

B. Nationhood Without Sovereignty

Puerto Rico presents a condition that is central to the analysis of democratic legitimacy: the existence of a culturally and politically coherent people operating without sovereign

[32] See Margaret Power, Human Rights and Transnational Solidarity in Cold War Latin America 2–5 (2015)

authority. The island's national identity exists alongside a political structure in which ultimate authority resides outside that community. This creates a disjunction between identity and power. Scholarly work on Puerto Rican nationalism underscores that this identity is not merely cultural but political. Margaret Power's analysis of Puerto Rican nationalist movements highlights the development of anti-colonial consciousness and transnational solidarity rooted in a shared understanding of political subordination.[33] These movements reflect a recognition within Puerto Rico that its condition is not simply administrative but fundamentally political.

At the same time, Puerto Rico's political institutions do not reflect that national identity in terms of sovereign authority. The island exercises internal governance but remains subject to Congressional power. As González-Cruz documents, resistance to U.S. rule has been a recurring feature of Puerto Rican political life, reflecting an ongoing contest between local identity and external authority.[34] From the perspective of Puerto Rican nationalists, the island's continued territorial status reflects not an anomaly but ongoing U.S. imperial power, exposing the contradiction between democratic ideals and colonial governance.[35] This resistance is itself evidence of political consciousness and reinforces the conclusion that Puerto Rico constitutes a people rather than a passive territory.

The coexistence of national identity and external control produces a structurally unstable condition. Puerto Rico functions as a nation in cultural and social terms while remaining a territory in constitutional terms. This gap between identity and sovereignty is not merely theoretical; it shapes the lived political reality of the island. As Morales observes, Puerto Rico's status reflects a tension between cultural cohesion and political subordination, where identity persists without corresponding political power.[36]

C. Why This Matters Legally

The recognition of Puerto Rico as a distinct people has direct implications for constitutional and democratic analysis. The question presented by Puerto Rico's status is not simply how the United States governs a territory, but how it governs a people with a defined national identity. This distinction is critical because democratic legitimacy is grounded not only

[33] See Margaret Power, Nationalism in a Colonized Nation 134 (2013).
[34] See Michael González-Cruz, The U.S. Invasion of Puerto Rico, 25 Latin Am. Persp. 7, 7–8 (1998).
[35] See Margaret Power, Seeing the U.S. Empire through the Eyes of Puerto Rican Nationalists Who Opposed It 3–6 (2015)
[36] See Ed Morales, Fantasy Island 22-30, 95-105 (2019).

in institutional structure, but in the relationship between a governing authority and the people subject to it.

Where governance is exercised over a distinct political community, the absence of sovereign authority raises questions that cannot be resolved through formal legality alone. A system may be constitutionally authorized and yet fail to satisfy the principles of democratic self-government if the governed population lacks meaningful control over the ultimate source of political power. Puerto Rico's status presents precisely this problem.

The persistence of Puerto Rican national identity underscores that the island's political condition is not one of administrative management, but of political subordination. As Meléndez-Badillo's historical account makes clear, Puerto Rico's people have maintained a continuous sense of collective identity despite shifts in legal status.[37] That continuity highlights the stakes of the constitutional framework described in earlier sections: it is not simply a system of territorial governance, but a system that governs a people without vesting them with ultimate authority over their political future.

This distinction justifies the need for a legitimacy analysis. If Puerto Rico were merely a territory in the administrative sense, questions of democratic legitimacy might be secondary to questions of governance efficiency or statutory authority. But because Puerto Rico constitutes a distinct people, the absence of sovereignty raises a fundamental question: whether a political system defined by external plenary power can claim democratic legitimacy when applied to a self-identified national community.

VI. A FRAMEWORK FOR DEMOCRATIC LEGITIMACY UNDER EXTERNAL PLENARY POWER

A. Distinguishing Legality from Legitimacy

The preceding analysis demonstrates that Puerto Rico's political status is constitutionally authorized. Congress's authority over the island is grounded in Article IV of the United States Constitution, and the Supreme Court has confirmed that Puerto Rico's governing power ultimately derives from federal authority rather than from an independent sovereign source.[38] As

[37] See Jorell Meléndez-Badillo, Puerto Rico: A National History 16–17 (2024).
[38] See U.S. Const. art. IV, § 3, cl. 2 and *Puerto Rico v. Sánchez Valle,* 579 U.S. 59, 68 (2016)

a matter of positive law, the current territorial arrangement is therefore valid within the existing constitutional framework.

That conclusion, however, resolves only a limited inquiry. Constitutional validity establishes that authority may be exercised; it does not establish that such authority is democratically justified. A system can comply with constitutional doctrine while still failing to satisfy the normative requirements of political equality, self-determination, and meaningful participation that define democratic governance. The distinction between legality and legitimacy thus becomes essential where the exercise of power extends over a population that does not fully participate in the institutions that generate that power.

This distinction is particularly significant in the territorial context. Article IV grants Congress plenary authority over the territories, but it does not specify the conditions under which that authority becomes democratically legitimate. The Constitution authorizes governance; it does not, standing alone, resolve whether such governance reflects the consent of the governed or the principles of equal political membership. As a result, the constitutional framework permits forms of political organization that are legally coherent but democratically incomplete.

Colón Morera identifies this tension as a defining feature of Puerto Rico's political status, noting that the United States maintains a relationship with the island that is formally consistent with constitutional doctrine yet difficult to reconcile with democratic principles.[39] The persistence of territorial governance reflects not a failure of constitutional law, but the operation of a system that allows legality and democratic legitimacy to diverge. This divergence is not incidental; it is embedded within a structure that permits the exercise of sovereign authority without full political inclusion.

Henning's analysis reinforces this point by illustrating how formal legal inclusion can coexist with substantive political limitation.[40] In Puerto Rico, citizenship, local governance, and constitutional recognition function within a framework that preserves external control over ultimate decision-making authority. These features may give the appearance of democratic inclusion, but they do not resolve the underlying question of whether the system itself satisfies the conditions of legitimate self-government.

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[39] See José Javier Colón Morera, Puerto Rico: A Case of American Imperial Doubts? 7-10 (2018).
[40] See Maye Lan Henning, The Empty Gift 3-6 (2017).

Recognizing the gap between legality and legitimacy establishes the need for a distinct analytical framework. If constitutional authorization alone cannot determine whether a political arrangement is democratically justified, then the evaluation of Puerto Rico's status must proceed according to criteria that are not contained within the doctrine itself. The task, therefore, is not to reinterpret existing constitutional law, but to articulate the structural conditions under which the exercise of political authority over a distinct people can be considered democratically legitimate.

B. Structural Principles of Democratic Legitimacy

Democratic legitimacy can be evaluated through a set of structural principles that examine the relationship between political authority and the community subject to it. These principles focus not on the formal validity of legal arrangements, but on the conditions under which authority is exercised, maintained, and experienced. By shifting the inquiry from doctrine to structure, they provide a means of assessing whether a system of governance reflects the foundational requirements of democratic self-rule.

At a minimum, democratic legitimacy turns on whether a governing system is structured in a way that links political power to the people subject to it. The relevant inquiry is therefore not merely whether institutions exist, but whether the underlying conditions of authority support self-rule, political equality, and meaningful control by the governed.

First, democratic legitimacy presupposes a meaningful connection between the source of governing authority and the political community subject to that authority. Where authority originates outside the governed community, the claim to legitimacy becomes attenuated, even where local institutions exist. As Rivera Ramos explains, the legal construction of territorial status permits the exercise of authority over a population while maintaining a structure of political subordination, even where formal inclusion is present.[41]

Second, democratic legitimacy requires the capacity for equal political participation in the institutions that generate binding authority. This principle extends beyond the existence of formal rights to include the practical ability to influence decision-making processes. A system in which a population is subject to laws it does not meaningfully participate in creating raises fundamental concerns about political equality.

[41] See Efrén Rivera Ramos, Foreign in a Domestic Sense 110–11 (2001).

Third, legitimacy depends on the existence of mechanisms through which governing authority can be altered by the political community subject to it. The ability to revise or reject a governing structure is a core component of self-determination. Where ultimate authority is insulated from meaningful alteration by the governed, political power becomes effectively unilateral, even if exercised through local intermediaries.

Fourth, democratic legitimacy requires that the exercise of authority be grounded in a relationship of consent that is both meaningful and ongoing. Consent cannot be reduced to historical acquiescence or formal legal designation; it must reflect the continuing political will of the governed. Where such consent is absent, unclear, or structurally constrained, claims to legitimacy are correspondingly weakened. This dynamic is consistent with what Cruz-Martínez identifies as the continued operation of colonial governance under the Territorial Clause, through which Congress maintains plenary authority over Puerto Rico despite the existence of local political institutions.[42]

Finally, legitimacy is shaped not only by formal institutional arrangements, but by the broader political and social context in which those arrangements operate. A system that produces persistent disparities in political power, even while maintaining the appearance of inclusion, may fail to satisfy the substantive requirements of democratic governance. Formal recognition and symbolic inclusion cannot substitute for actual political equality.

These principles do not represent a comprehensive theory of democracy. They instead identify core structural conditions that must be present for a system of governance to plausibly claim democratic legitimacy. Together, they provide a framework through which the relationship between authority and political community can be evaluated beyond the limits of constitutional doctrine.

C. The Five-Element Test

The structural principles outlined above can be synthesized into a five-element framework for evaluating democratic legitimacy under conditions of external plenary power. Grounded in the relationship between political authority, participation, and the political community, this framework provides a structured method for assessing whether a system of

[42] See Gibrán Cruz-Martínez, Puerto Rico, Colonialism, and Neocolonialism 1-2, 8-10 (2019).

governance satisfies the foundational requirements of democratic self-rule.[43] A political arrangement may be constitutionally valid and yet fail one or more of these criteria.

A political system is democratically legitimate only where authority is inherent, participation is equal, autonomy is meaningful, consent is ongoing and revocable, and political equality is substantive.

Under this framework, democratic legitimacy depends on the satisfaction of all of the following conditions:

(1) Inherent Source of Authority

The ultimate source of governing power must originate within the political community itself, rather than from an external sovereign. A system in which authority is derived from delegation rather than inherent sovereignty cannot satisfy this condition.

(2) Equal Political Participation

The population subject to governing authority must possess full and equal participation in the institutions that generate binding law, including the ability to elect representatives with voting power and to meaningfully influence decision-making processes.

(3) Meaningful Political Autonomy

The political community must retain meaningful autonomy over its governing structure, including the ability to define, modify, or fundamentally alter its political arrangement. Where ultimate authority remains subject to unilateral external control, autonomy is not meaningfully secured.

(4) Ongoing and Revocable Consent

The exercise of authority must be grounded in the continuing consent of the governed, expressed through mechanisms that are both meaningful and capable of revision. Consent that is historical, ambiguous, or structurally constrained is insufficient.

(5) Substantive Political Equality

[43] See Efrén Rivera Ramos, Foreign in a Domestic Sense 110–11 (2001); Gibrán Cruz-Martínez, Puerto Rico, Colonialism, and Neocolonialism 1-2, 8-10 (2019); and Maye Lan Henning, The Empty Gift 1-6 (2017).

> The governing system must provide not only formal recognition, but actual political equality. Where disparities in political power persist despite the presence of citizenship, local governance, or constitutional inclusion, this condition is not satisfied.

These elements are interrelated but analytically distinct. A system that fails to satisfy one or more of these conditions cannot be considered democratically legitimate; the presence of multiple deficiencies further strengthens that conclusion. The framework is therefore cumulative in effect, allowing for a structured evaluation of how legal authority operates in relation to political community.

Importantly, this test does not depend on the formal classification of a political entity within constitutional doctrine. Whether a jurisdiction is labeled a territory, a commonwealth, or otherwise is not dispositive. The relevant inquiry is structural: how authority is constituted, exercised, and experienced by the people subject to it.

The following section applies this framework to Puerto Rico's political status, evaluating whether the current territorial arrangement satisfies the conditions of democratic legitimacy.

VII. APPLICATION: PUERTO RICO

A. Inherent Source of Authority

The first element of the framework requires that the ultimate source of governing authority originates within the political community itself. A system in which political power is exercised by a governing structure whose authority is externally derived cannot satisfy this condition, regardless of the degree of local autonomy it permits.

Puerto Rico's political status fails this requirement as a matter of constitutional doctrine. In *Puerto Rico v. Sánchez Valle*, the Supreme Court made clear that Puerto Rico's governing authority does not arise from an independent sovereign source, but instead "flows from the Federal Government." 579 U.S. 59, 68 (2016). The Court's reasoning focused not on the scope of Puerto Rico's powers, but on their origin. Even after the adoption of the Puerto Rico Constitution, the island's authority remained derivative of congressional delegation rather than inherent sovereignty.

This distinction is dispositive under the framework. The existence of local governmental institutions, including a constitutionally organized executive, legislative, and judicial structure, does not alter the source of authority from which those institutions derive their power. As established in earlier sections, Public Law 600 authorized Puerto Rico to organize its internal governance, but it did not transfer sovereignty or displace Congress as the ultimate source of political authority. The resulting system is one in which local governance operates within a structure of externally conferred power.

Rivera Ramos' analysis reinforces this conclusion by demonstrating how the legal construction of territorial status permits the exercise of authority over a population while maintaining a structure of political subordination.[44] The concept of the unincorporated territory enables the United States to govern Puerto Rico without incorporating it into a system of equal sovereignty, thereby preserving congressional supremacy while allowing for the appearance of local autonomy.

Under the first element of the test, this arrangement fails as a matter of structure, not degree. The issue is not whether Puerto Rico exercises meaningful governmental functions, but whether it possesses inherent authority to do so. With its governing power deriving from an external sovereign, the condition of inherent authority is not satisfied.

B. Equal Political Participation

The second element of the framework requires that the population subject to governing authority possess full and equal participation in the institutions that generate binding law. Democratic legitimacy depends not only on the existence of formal citizenship, but on the ability of the governed to meaningfully influence the decisions that structure their political and legal environment.

Puerto Rico's political status fails this requirement as a matter of institutional design. Although residents of Puerto Rico are United States citizens, they do not possess voting representation in Congress and cannot vote in presidential elections while residing on the island. Federal law applies to Puerto Rico in numerous domains, yet the population subject to that law lacks full participation in the legislative and executive processes through which it is created and enforced.

[44] See Efrén Rivera Ramos, Foreign in a Domestic Sense 110–11 (2001).

This asymmetry reflects a structural limitation rather than a contingent policy choice. Puerto Rico's representation in Congress is limited to a Resident Commissioner, who may participate in committees but does not possess a final vote on legislation. As a result, the island's residents are subject to binding federal authority without possessing equal voice in the institutions that exercise that authority. These structural limitations also manifest in persistent human rights concerns, including inequality, political exclusion, and barriers to full civic participation within the island.[45] The absence of voting representation places Puerto Rico outside the framework of political equality that characterizes the federal-state relationship.

Cabán's analysis of Puerto Ricans as "contingent citizens" captures this dynamic by emphasizing that formal membership in the United States does not guarantee full political inclusion.[46] Citizenship, in this context, operates within a structure in which rights and participation are unevenly distributed, leaving Puerto Ricans simultaneously incorporated and excluded.

Margaret Power's work further situates this condition within a broader pattern of political inequality, demonstrating how the absence of meaningful participation contributes to the development of nationalist consciousness and claims to self-determination.[47] Where a population is governed without equal representation, the legitimacy of that governance becomes fundamentally contested.

Under the second element of the test, Puerto Rico's political arrangement fails to provide equal political participation. The issue is not the absence of citizenship, but the absence of full and equal participation in the institutions that exercise governing authority. This structural inequality precludes satisfaction of the second condition of democratic legitimacy.

C. Meaningful Political Autonomy

The third element of the framework requires that a political community retain meaningful autonomy over its governing structure, including the ability to define, modify, or fundamentally alter its political arrangement. Democratic legitimacy depends not only on the existence of local

[45] See José Javier Colón Morera & Idsa E. Alegría Ortega, Puerto Rico y los derechos humanos 6–10 (2012)
[46] See Pedro Cabán, Puerto Ricans as Contingent Citizens, 29 Centro J. 238, 240–41 (2017).
[47] See Margaret Power, The History of Puerto Rico Shows That Nationalism Can Be Liberatory Rather Than Xenophobic 1-6 (2020).

institutions, but on the capacity of those institutions to operate free from unilateral external control.

Puerto Rico's political status fails this requirement as a matter of legal structure. Although the island maintains a constitutionally organized system of local governance, that system operates within a framework in which Congress retains ultimate authority. The powers exercised by Puerto Rico's institutions are not insulated from external revision, but instead remain subject to congressional modification, limitation, or withdrawal.

The Supreme Court's decision in *Puerto Rico v. Franklin California Tax-Free Trust* illustrates the practical implications of this arrangement; the Court held that Puerto Rico lacked the authority to enact its own municipal bankruptcy regime because Congress had excluded it from the relevant federal statutory framework. 579 U.S. 115, 122–23 (2016). At the same time, Puerto Rico remained bound by federal restrictions that prevented it from exercising independent authority in that domain. The result was not merely a limitation on a particular policy choice, but a demonstration of the island's inability to define the scope of its own governing powers.

This constraint is reinforced by the statutory structure established under Public Law 600. While the Act authorized Puerto Rico to adopt a local constitution, it preserved Congress' authority to alter the terms of the island's governance. Puerto Rico's autonomy is therefore contingent rather than secure, existing only to the extent that Congress permits it to exist.

As Cabán explains, Puerto Rico's political development reflects "state formation in a colonial context," in which institutional growth occurs within, rather than outside of, a structure of external control.[48] The presence of local governance does not eliminate this constraint; it operates within it. Autonomy, in this sense, is administrative rather than sovereign.

Under the third element of the test, this arrangement fails to provide meaningful political autonomy. The issue is not whether Puerto Rico exercises local control in certain areas, but whether it possesses the authority to determine the scope of that control free from external override. With ultimate authority remaining subject to unilateral congressional power, autonomy is not meaningfully secured.

[48] See Pedro A. Cabán, Puerto Rico: State Formation in a Colonial Context, 30 Caribbean Stud. 170–72 (2002).

D. Ongoing and Revocable Consent

The fourth element of the framework requires that the exercise of political authority be grounded in the ongoing and revocable consent of the governed. Democratic legitimacy depends not only on the existence of formal political processes, but on the presence of mechanisms through which a political community can meaningfully affirm, reject, or revise the structure under which it is governed.

Puerto Rico's political status fails this requirement because the relationship between the island and the United States is not grounded in a system of consent that is both ongoing and revocable. Although Public Law 600 was framed as establishing a "compact" between Puerto Rico and the United States, that characterization does not reflect a binding or bilateral allocation of authority. Congress retained the power to alter or override the island's governing structure, and Puerto Rico does not possess a corresponding ability to unilaterally redefine or terminate that relationship.

This asymmetry is dispositive. Consent, within the meaning of democratic legitimacy, must be both meaningful and capable of revision. A political arrangement cannot be considered consensual where one party retains unilateral authority to define the terms of the relationship while the other lacks the ability to withdraw from or fundamentally alter those terms. The absence of reciprocal power transforms what appears to be consent into a form of constrained acquiescence.

Historical context reinforces this conclusion. As González-Cruz documents, Puerto Rico's incorporation into the United States was the result of military occupation rather than negotiated agreement, and the island's political status has evolved through a series of unilateral federal actions rather than through mutually binding processes of self-determination.[49] Later developments, including the adoption of the Puerto Rico Constitution, occurred within a framework in which ultimate authority remained external.

Contemporary political processes do not cure this deficiency. While plebiscites and local expressions of political preference have taken place, they do not possess binding legal force over Congress. These processes reflect political preference but they lack binding legal effect and therefore cannot transform the underlying allocation of authority.The absence of a mechanism through which the expressed will of Puerto Rico's population can compel structural change

[49] See Michael González-Cruz, The U.S. Invasion of Puerto Rico 1-8 (1998).

underscores the lack of meaningful, ongoing consent. Without the ability to effectuate change, expressions of preference do not constitute democratic authorization.

Under the fourth element of the test, Puerto Rico's political arrangement fails to satisfy the requirement of ongoing and revocable consent. The issue is not whether Puerto Ricans have participated in political processes, but whether those processes confer meaningful control over the structure of governance. With ultimate authority remaining externally determined and insulated from unilateral revision by the governed, the condition of consent is not met.

E. Substantive Political Equality

The fifth element of the framework requires that a system of governance provide not only formal recognition, but actual political equality. Democratic legitimacy depends on the alignment between legal status and political power; where disparities in authority persist despite the presence of citizenship, local governance, or constitutional inclusion, the requirement of substantive equality is not satisfied.

Puerto Rico's political status fails this requirement because the formal markers of inclusion do not translate into equal political power. Residents of Puerto Rico are United States citizens and participate in a locally organized system of self-government, yet they remain excluded from full participation in the national institutions that exercise ultimate authority over them. This divergence between status and power is not incidental, it is a defining feature of the territorial framework.

Henning's analysis captures this dynamic by demonstrating how citizenship in Puerto Rico operates as a form of inclusion that does not carry the full set of rights and powers associated with equal political membership.[50] Rather than functioning as a mechanism of incorporation into a system of equal sovereignty, citizenship exists within a structure that preserves external control while extending limited forms of participation. The result is a political condition in which formal equality coexists with substantive inequality.

Cabán similarly describes Puerto Ricans as "contingent citizens," emphasizing that membership in the United States does not guarantee equal standing within its political system.[51] This condition reflects a broader pattern in which legal recognition does not eliminate disparities

[50] See Maye Lan Henning, The Empty Gift 2-5 (2017).
[51] See Pedro Cabán, Puerto Ricans as Contingent Citizens, 29 Centro J. 238, 240–41 (2017).

in political power, but instead operates alongside them. Puerto Rico's residents are subject to federal authority while lacking equal capacity to influence that authority, placing them outside the framework of political equality that defines democratic governance.

This inequality is reinforced by the cumulative effect of the preceding elements. The absence of inherent authority, the limitation of political participation, the constraint of autonomy, and the deficiency of consent all converge to produce a system in which political power is unevenly distributed. Substantive inequality is therefore not an isolated failure, but the predictable outcome of a structure in which authority remains externally controlled.

Under the fifth element of the test, Puerto Rico's political arrangement fails to provide substantive political equality. The issue is not the absence of formal recognition, but the persistence of unequal political power despite that recognition. Because the territorial framework produces and maintains these disparities, the condition of substantive political equality is not satisfied.

VIII. THE STRUCTURAL NATURE OF THE DEMOCRATIC DEFICIT

The preceding analysis demonstrates that Puerto Rico's failure to satisfy the requirements of democratic legitimacy is not the result of isolated institutional shortcomings or contingent policy decisions. Each element of the framework reveals a consistent pattern: the absence of inherent authority, the limitation of political participation, the constraint of autonomy, the deficiency of consent, and the persistence of substantive political inequality. Considered individually, these deficiencies are significant. Taken together, they reflect something more fundamental – a system in which democratic failure is not incidental, but structural.

This conclusion follows directly from the legal architecture governing Puerto Rico's political status. The Territorial Clause, as interpreted through the Insular Cases and reaffirmed in modern doctrine, establishes a framework in which Congress may exercise plenary authority over a population that does not fully participate in the institutions that generate that authority. This structure permits the coexistence of local governance and external supremacy, creating a system that appears to incorporate elements of self-government while preserving ultimate control in an external sovereign. The result is a form of political organization in which democratic legitimacy is systematically constrained by design.

It is therefore misleading to characterize Puerto Rico's democratic deficit as a temporary condition or a product of policy failure, as such framing obscures the structural conditions that produce it. The limitations identified in Section VII do not arise from correctable errors in implementation, nor from the absence of particular reforms. They are instead the predictable consequences of a system in which authority is externally sourced, participation is structurally unequal, autonomy is contingent, consent is constrained, and political equality is not realized. Efforts to address these deficiencies without altering the underlying structure are necessarily limited, because they operate within the very framework that produces them.

This structural constraint also explains the persistence of Puerto Rico's political status despite repeated attempts at reform. Legislative adjustments, administrative changes, and non-binding political processes may modify aspects of governance, but they do not alter the fundamental relationship between Puerto Rico and the United States. So long as that relationship remains grounded in external plenary authority, the conditions required for democratic legitimacy cannot be fully satisfied.

The significance of this conclusion is not merely descriptive. It reframes the debate over Puerto Rico's political status by shifting the focus from policy preferences to structural coherence. The question is not whether particular reforms might improve aspects of governance, but whether a system organized around external sovereignty can ever satisfy the requirements of democratic legitimacy for a distinct political community. The analysis here suggests that it cannot.

IX. THE INCOHERENCE OF PERMANENT TERRITORIAL STATUS

A. The Problem of Permanence

The preceding analysis demonstrates that Puerto Rico's political status fails to satisfy the requirements of democratic legitimacy under the five-element framework. That conclusion raises a broader question: whether a system of governance defined by external plenary authority can coherently exist as a permanent political arrangement. The answer, as the structure of territorial doctrine makes clear, is that it cannot.

Territorial status, as established under Article IV and developed through statutory and judicial interpretation, was not designed as a final or enduring political condition. Historically,

territories have functioned as transitional entities, either progressing toward statehood or moving toward independence. The concept of a permanent territory, governed indefinitely under external authority without full political incorporation or sovereign separation, represents a departure from that historical understanding.

This departure produces a fundamental tension between permanence and legitimacy. A system that fails to satisfy the conditions of democratic self-government may persist temporarily as a matter of legal or political convenience. However, when such a system is treated as a stable endpoint rather than a transitional phase, the underlying deficiencies become entrenched rather than resolved. The absence of inherent authority, equal participation, meaningful autonomy, ongoing consent, and substantive equality cannot be reconciled with the idea of a permanent political arrangement.

Colón Morera's analysis of congressional engagement with Puerto Rico's status underscores this instability. The persistent inability of Congress to resolve the island's political status reflects not merely political disagreement, but the absence of a coherent framework for maintaining territorial subordination as a long-term solution.[52] The status question remains open not because it is unresolved, but because it is structurally resistant to resolution within the existing framework.

This instability is further reflected in the recurring proposals to redefine or reform Puerto Rico's status without fundamentally altering the underlying allocation of authority. Efforts to construct forms of "enhanced commonwealth" or other intermediate arrangements seek to reconcile the appearance of self-government with the reality of external supremacy. Yet these proposals ultimately reproduce the same structural contradiction: the attempt to maintain a system of governance that is neither fully sovereign nor fully incorporated, while expecting it to function as a stable and legitimate political order.

The problem of permanence, therefore, is not simply one of political will. It is a problem of structural incoherence. A system defined by external plenary authority cannot simultaneously function as a permanent political arrangement and satisfy the requirements of democratic legitimacy. The longer such a system persists, the more pronounced its internal contradictions become.

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[52] See José Javier Colón Morera, Rafael Albarrán, & Ángel Israel Rivera, The United States Congress and the Puerto Rican Political Status Question 4-8, 11-14 (1993).

B. Failure of "Enhanced Commonwealth"

Proposals for an "enhanced commonwealth" seek to resolve Puerto Rico's political status by preserving its association with the United States while expanding the scope of local autonomy. These proposals are typically framed in terms of mutual consent, bilateral compact, and insulation from unilateral congressional action. In this way, they attempt to reconcile the benefits of continued affiliation with the United States with the demands of greater self-government.

However, as a matter of constitutional structure, such arrangements cannot eliminate the core features that give rise to Puerto Rico's democratic deficit. Under Article IV, Congress retains plenary authority over the territories, including the power to legislate, modify, or revoke existing statutory frameworks. Any arrangement that purports to limit that authority without altering the constitutional allocation of power is therefore unstable as a matter of law. The premise of an "enhanced" status, namely that Puerto Rico could achieve a form of binding bilateral sovereignty within the territorial framework, cannot be reconciled with the existing structure of constitutional doctrine.

This limitation is not simply theoretical, proposals that attempt to create permanent arrangements short of statehood or independence have consistently failed to secure durable support at the federal level.[53] This pattern reflects the underlying tension between political aspirations for greater autonomy and the constitutional constraints that define territorial governance. Congress cannot, through ordinary legislation, permanently bind itself in a manner that would eliminate its own plenary authority.

As a result, "enhanced commonwealth" proposals attempt to achieve, through statutory or political means, what the constitutional structure does not permit. They seek to construct a status that is neither fully subordinate nor fully sovereign, while expecting it to function as both stable and legitimate. This effort reproduces the same structural contradiction identified in the preceding section: the coexistence of local self-government with external supremacy.

From the perspective of democratic legitimacy, these proposals do not resolve the deficiencies identified in the five-element framework. Authority would remain externally derived rather than inherent, participation would remain unequal within federal institutions, autonomy

[53] See José Javier Colón Morera, Rafael Albarrán, & Ángel Israel Rivera, The United States Congress and the Puerto Rican Political Status Question 4-8, 11-14 (1993).

would remain contingent on congressional discretion, consent would remain non-binding, and substantive political equality would not be achieved. The expansion of local powers does not alter the underlying source of authority or the structure within which those powers are exercised.

The failure of "enhanced commonwealth" proposals therefore reflects more than political disagreement or legislative inaction. It reflects a deeper incompatibility between the concept of permanent territorial status and the requirements of democratic legitimacy. So long as external plenary authority remains intact, no reform that preserves the territorial framework can fully resolve the structural democratic deficit.

C. Structural Contradiction

The difficulty with permanent territorial status is not limited to the failure of particular proposals or the persistence of political disagreement. It lies in a deeper structural contradiction: the attempt to sustain a system of governance that combines elements of self-government with the continued exercise of external sovereign authority. This contradiction is not contingent or remediable; it is inherent in the design of territorial governance under plenary power.

Territorial status, as currently structured, requires the coexistence of two incompatible premises. On one hand, it purports to recognize a distinct political community capable of organizing its own internal governance. On the other, it subjects that community to the ultimate authority of an external sovereign that retains the power to define, limit, or revoke that governance. The resulting system seeks to maintain both autonomy and subordination simultaneously, without fully resolving the tension between them.

Pantojas-García's analysis of Puerto Rico's political and economic condition reflects this contradiction by describing a persistent "paradox" in which the island is both integrated into and marginalized within the United States system.[54] This duality is not merely descriptive; it captures the instability produced by a structure that attempts to reconcile competing and ultimately incompatible forms of political organization. Puerto Rico is neither fully incorporated nor fully independent, and its status reflects the unresolved tension between these alternatives.

Colón Morera similarly identifies a form of institutional uncertainty in the United States' approach to Puerto Rico, emphasizing the absence of a coherent and stable framework for

[54] See Emilio Pantojas-García, The Puerto Rican Paradox 2-5, 12-18 (2005).

resolving the island's political status.[55] This uncertainty is not simply the product of political indecision, but a manifestation of the structural limitations of the territorial model itself. A system that cannot reconcile its foundational premises cannot generate a stable or enduring political arrangement.

The contradiction becomes most apparent when territorial status is treated as a permanent endpoint rather than a transitional phase. As a temporary arrangement, the tension between autonomy and external authority may be tolerated as part of an ongoing process of political development. As a permanent condition, however, that tension becomes unsustainable. A system that simultaneously denies inherent sovereignty while purporting to provide meaningful self-government cannot, over time, maintain coherence or legitimacy.

From the perspective of democratic legitimacy, this contradiction is decisive. The five-element framework demonstrates that the conditions required for legitimate governance cannot be fully satisfied within a structure defined by external plenary power. The failure is not episodic; it is structural. The contradiction is not between competing policy choices, but between the premises of territorial governance itself.

Permanent territorial status is therefore not simply flawed or incomplete, it is conceptually unstable. A political system cannot simultaneously function as both subordinate and self-governing in a manner that satisfies the requirements of democratic legitimacy. The attempt to do so produces the very conditions of inequality, constraint, and uncertainty that define Puerto Rico's current status.

X. STRUCTURALLY COHERENT ALTERNATIVES

A. Statehood

Statehood represents one of the two constitutionally recognized pathways through which Puerto Rico's current territorial status could be transformed into a structurally coherent political arrangement. Unlike territorial governance, which is defined by external plenary authority, statehood would incorporate Puerto Rico fully into the federal system, extending to its residents the same constitutional status and political rights enjoyed by the citizens of the states.

[55] See José Javier Colón Morera, Puerto Rico: A Case of American Imperial Doubts? 2-5, 6-10 (2018).

From the perspective of democratic legitimacy, statehood addresses several of the core deficiencies identified in the five-element framework. Most significantly, it resolves the absence of equal political participation by granting Puerto Rico full voting representation in Congress and participation in presidential elections. Under statehood, the island's residents would possess the same formal mechanisms of political influence as citizens in the states, eliminating the asymmetry that currently characterizes Puerto Rico's relationship to federal authority.

Statehood also mitigates the problem of substantive political inequality by aligning legal status with political power. Citizenship would no longer operate within a framework of partial inclusion, but instead as part of a system in which political rights and institutional participation are distributed on equal terms. In this sense, statehood eliminates the divergence between formal recognition and actual political authority that defines Puerto Rico's current condition.

However, statehood does not fully resolve all elements of the democratic legitimacy framework. In particular, the ultimate source of governing authority would remain located within the federal constitutional system rather than within Puerto Rico as a distinct political community. As with all states, sovereignty would be shared within the structure of federalism, rather than exercised as an independent source of authority. For a political community that understands itself as distinct, this may leave unresolved questions regarding inherent sovereignty and collective self-determination.

Similarly, while statehood provides meaningful autonomy within the federal system, that autonomy exists within a framework of constitutional supremacy. States retain significant authority over internal governance, but they remain subject to federal law and constitutional constraints. The question, therefore, is not whether autonomy exists under statehood, but whether that autonomy satisfies the requirement of meaningful political self-determination as defined by the framework.

Despite these limitations, statehood represents a structurally coherent alternative to territorial status. It replaces a system of external plenary authority with one of constitutionally defined political equality, resolving the most significant democratic deficits identified in this analysis. While it may not fully align authority with a distinct sense of peoplehood, it eliminates the structural contradiction inherent in permanent territorial subordination by integrating Puerto Rico into a system of equal political membership.

B. Independence

Independence represents the second constitutionally recognized pathway through which Puerto Rico's political status could be transformed into a structurally coherent and democratically legitimate arrangement. Unlike statehood, which incorporates Puerto Rico into the existing federal system, independence reconstitutes the island as a sovereign political community, removing it from the framework of external plenary authority that defines territorial governance.

From the perspective of democratic legitimacy, independence directly resolves the deficiencies identified in the five-element framework. Most fundamentally, it satisfies the requirement of an inherent source of authority by locating sovereignty within the political community itself. Under independence, governing power would no longer derive from congressional delegation, but from the people of Puerto Rico as a self-determining body. This shift eliminates the core structural defect identified in Section VII.A.

Independence also restores meaningful political autonomy. Without the constraint of external plenary authority, the political community would possess full control over its governing structure, including the ability to define, modify, or replace its constitutional order. Autonomy would no longer be contingent on the discretion of an external sovereign, but instead secured through the exercise of internal sovereignty.

The requirement of ongoing and revocable consent is similarly satisfied under independence. Political authority would be grounded in institutions created and maintained by the governed, with mechanisms for revision and reform determined internally rather than imposed externally. The relationship between the governing structure and the political community would therefore reflect a continuous process of democratic authorization, rather than a condition of constrained acquiescence.

Independence also aligns formal status with substantive political equality. Citizens of an independent Puerto Rico would possess equal standing within their own political system, participating fully in the institutions that exercise governing authority. The disparity between citizenship and political power that characterizes the current territorial framework would be eliminated, as membership and authority would be coextensive within the same political community.

Finally, independence resolves the requirement of equal political participation by ensuring that those subject to governing authority are the same individuals who constitute the political body from which that authority derives. The separation between the governed and the governing institutions, central to Puerto Rico's current status, would no longer exist.

Independence represents a decolonial resolution to Puerto Rico's political condition, eliminating the structural features that sustain colonial governance under the Territorial Clause.[56] By removing Puerto Rico from the framework of external sovereignty, independence resolves the structural contradiction identified in Section IX and establishes a system of governance capable of satisfying the requirements of democratic legitimacy.

This conclusion does not depend on a normative preference for independence over other political arrangements. Rather, it reflects the analytical outcome of the five-element framework. Independence is the only option that fully eliminates external plenary authority, aligns political power with the community subject to it, and definitively preserves Puerto Rico's national and cultural identity by vesting ultimate authority in the Puerto Rican people themselves. Unlike arrangements that require Puerto Rico to negotiate its identity within an external constitutional order, independence secures that identity through sovereign self-definition. It therefore resolves each of the structural deficiencies identified in this analysis while ensuring that Puerto Rico's future is determined by the political community whose history, culture, language, and collective identity are at stake.

C. Analytical Framing

The preceding analysis of statehood and independence does not operate as a normative endorsement of either political outcome. Rather, it reflects the application of a structural framework designed to evaluate democratic legitimacy under conditions of external plenary power. The conclusions reached in this section follow from the internal logic of that framework, not from a preference for any particular political arrangement.

This distinction is critical. Debates over Puerto Rico's political status are often framed in terms of cultural identity, economic consequences, or political feasibility. While these considerations are significant, they operate within a different analytical domain. The framework developed in this paper addresses a more fundamental question: whether a given system of

[56] See Gibrán Cruz-Martínez, Puerto Rico, Colonialism, and Neocolonialism 12-13 (2019).

governance satisfies the structural requirements of democratic legitimacy. As such, the evaluation of potential status options proceeds according to criteria of coherence between political authority and the community subject to it, rather than policy outcomes or political desirability.

Under this framework, the defining issue is the presence or absence of external plenary authority. Territorial status fails because it locates ultimate governing power outside the political community while maintaining a system of internal governance that depends on that external authority. Statehood and independence represent two distinct ways of resolving this condition. Statehood eliminates the asymmetry of political participation and equality by incorporating Puerto Rico into the federal system as a full and equal member. Independence, by contrast, eliminates external authority altogether, aligning sovereignty entirely with the political community itself.

The framework does not require that one of these alternatives be preferred over the other as a matter of policy or identity. It does, however, establish that any arrangement which preserves external plenary authority will reproduce the structural deficiencies identified in Sections VII and VIII. In this sense, the analysis narrows the range of constitutionally and democratically coherent options, even as it leaves open the ultimate question of political choice.

This conclusion reframes the status debate. Rather than asking which option is most desirable in the abstract, the relevant inquiry becomes which arrangements are capable of satisfying the structural conditions of democratic legitimacy. Once that threshold is established, questions of preference, feasibility, and implementation may be considered within a framework that excludes structurally incoherent alternatives.

XI. IMPLICATIONS FOR CONSTITUTIONAL LAW AND DEMOCRATIC LEGITIMACY

The analysis presented in this paper demonstrates that Puerto Rico's political status is constitutionally authorized yet fails to satisfy the structural requirements of democratic legitimacy. This conclusion does not reveal a contradiction within constitutional doctrine, but rather a limitation of the doctrine itself. Territorial law, as currently understood, answers the question of whether Congress may exercise authority over the territories; it does not address

whether the resulting systems of governance are consistent with the principles of democratic self-rule.

This distinction has broader implications for constitutional interpretation. The prevailing framework of territorial doctrine, grounded in the Territorial Clause and shaped by judicial precedent, permits the existence of political arrangements in which governance is legally valid but structurally unequal. By focusing on the scope of congressional power rather than the conditions under which that power is exercised, the doctrine creates space for forms of governance that fall outside the core commitments typically associated with democratic constitutionalism.

The continued reliance on plenary power as a basis for territorial governance normalizes a category of political organization in which citizenship, participation, and authority are not aligned. As this paper has shown, the resulting disparities are not incidental or temporary, but structural features of a system that allows for the exercise of sovereign power without full political inclusion. The Constitution, as interpreted in this context, does not prohibit such arrangements; it accommodates them.

Recognizing this limitation does not require rejecting territorial doctrine or denying its constitutional foundation. It does, however, require acknowledging that legality and legitimacy are distinct analytical questions. A constitutional system that permits governance without full political equality raises concerns that cannot be resolved solely within the framework of existing doctrine. As a result, the evaluation of territorial status must extend beyond questions of constitutional authorization to include consideration of whether such arrangements satisfy the basic conditions of democratic legitimacy.

This perspective reframes the role of constitutional analysis in the territorial context. Rather than treating the scope of congressional authority as the endpoint of inquiry, it invites a more comprehensive evaluation of how that authority is exercised and experienced by the populations subject to it. Incorporating a legitimacy-based framework does not displace constitutional doctrine, but supplements it by addressing questions that the doctrine, in its current form, leaves unresolved.

The implications of this shift extend beyond Puerto Rico. The existence of a constitutional framework that permits the indefinite governance of a politically distinct population without full participation or equal status raises fundamental questions about the

relationship between constitutional power and democratic principle. Puerto Rico's status brings these questions into sharp focus, but the underlying issue is broader: whether a constitutional system can remain coherent while accommodating forms of governance that diverge from its own normative commitments.

CONCLUSION

Puerto Rico's political status has long been understood as a product of constitutional doctrine and political compromise. This paper has demonstrated that it is more than that. It is a system of governance that is legally authorized yet structurally incapable of satisfying the basic requirements of democratic legitimacy. The distinction between legality and legitimacy is not incidental, it is the central feature of the territorial framework.

Through the five-element analysis developed here, Puerto Rico's status reveals a consistent pattern: authority that is not inherent, participation that is not equal, autonomy that is not secure, consent that is not fully operative, and political equality that is not realized. These are not isolated deficiencies, they are the predictable outcomes of a system defined by external plenary power. The result is a form of governance that functions within constitutional bounds while remaining structurally misaligned with the principles of democratic self-rule.

This misalignment carries broader implications. It demonstrates that constitutional authorization, standing alone, is not sufficient to establish the legitimacy of a political arrangement. A system may be lawful and yet fail to meet the standards of democratic governance it purports to uphold. In the territorial context, this gap is not resolved by incremental reform or recharacterization. It is embedded in the structure itself.

The analysis of potential alternatives reinforces this conclusion. So long as external plenary authority remains intact, the structural conditions that produce Puerto Rico's democratic deficit persist. Only arrangements that either eliminate that authority or replace it with equal political incorporation are capable of resolving the underlying contradiction. This is not a matter of preference, but of coherence between political power and the community subject to it.

Puerto Rico's status, then, is not simply an unresolved political question. It is a constitutional condition that exposes the limits of a doctrine that permits governance without full political inclusion. The persistence of that condition reflects not only political inertia, but a

framework that accommodates, rather than resolves, the divergence between authority and equality.

Autonomía prestada, soberanía negada. The language of self-government remains, but the source of power does not. Until that distinction is addressed at the level of structure rather than description, Puerto Rico's political status will remain lawful, but not legitimate—sustained by a legal fiction that disguises subordination as autonomy.

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