[The following was posted on the conlawprof listserv by Christina D. Ponsa-Kraus in reply to a letter from a group of constitutional law scholars in Puerto Rico, which itself was a response to a letter from a group of legal and constitutional scholars to Congressional leadership supporting the Puerto Rico Statehood Admission Act of 2021 and opposing the Puerto Rico Self-Determination Act of 2021.]

I'm sincerely grateful to the group of Constitutional Law scholars from Puerto Rico for their letter, and very much appreciate their thoughtful and thorough engagement with the one I've circulated (to which I will refer as "our" letter for the sake of conciseness). I will do my best to respond.

The authors say that they "disagree with or find acutely problematic some of [the] assumptions" underlying our letter. I've identified seven disagreements/criticisms.

First, the authors several times claim that our letter assumes that the result of the November 2020 referendum settled the question of Puerto Rican statehood, and they take issue with that assumption. Our letter does not make that assumption. Our letter supports the Admission Act, which responds to the referendum with an *offer* of statehood, which Puerto Ricans can accept or reject in a second referendum. This process does not treat the referendum as *settling* the question of statehood. It simply treats an offer of statehood as an appropriate response to the referendum.

Second, the authors refer to the narrow margin of victory (52.52%) and to low voter turnout (54.72%), arguing that it is "a contested issue" whether "these results show a clear majority for the type of irreversible decision that statehood implies." I assume the authors' claim is not that it is contested whether 52.52% of the vote is a clear majority: It is. If I understand correctly, the authors' claim here is that some people view this level of turnout and/or this margin of victory as not large enough for an irreversible choice in a self-determination process (such as, the choice to become a state). The claim implies, though stops short of, the argument that a self-determination vote requires super-majority turnout and/or a super-majority vote for the option that prevails to go into effect. Whatever one's view on that issue, it is not relevant to our letter, because the November referendum did not result in an "irreversible" decision. Our letter takes the position that it is appropriate for Congress to respond to the result of the referendum with an *offer* of statehood, which Puerto Ricans may accept or reject in a second referendum. Under the Admission Act, it is that *second* vote, and not the one last November, that could yield an irreversible decision in favor of statehood.

Third, the authors claim that our letter treats statehood as the "logical solution" to Puerto Ricans' overwhelming consensus in favor of remaining U.S. citizens. It does not. The relevant paragraph in our letter explains that this overwhelming consensus exists; that as between statehood and independence, only statehood would guarantee citizenship; that a majority of Puerto Ricans voted for statehood in the referendum; and that now that Puerto Ricans have asked for statehood, "it is time for the United States officially to offer it." The paragraph does not treat statehood as the "logical conclusion" of anything. It treats an *offer* of statehood as the logical—and appropriate—response to the referendum.

Fourth, the authors identify as a point of contention the question of whether the political status of Puerto Rico should be addressed merely as a matter of U.S. domestic law or as a question governed by international law. The implication here seems to be that our letter assumes that Puerto Rico's status is "merely" a matter of U.S. domestic law. But our letter does not make such an assumption. Our letter takes a position on a point of U.S. constitutional law that informs our opposition to the Self-Determination Act, and takes a position in favor of the Admission Act as an appropriate response to the referendum. Nothing in our letter forecloses the relevance of international law to Puerto Rico's status

debate. We do not address international law because nothing in international law has any bearing on the points our letter makes.

Fifth, the authors claim that there is a "third option": free association. I've responded at length to the same point earlier in this thread, so I won't reiterate those arguments here except to repeat that free association is a version of independence (as the letter itself accurately indicates).[1]

Sixth, the authors claim that our letter "seems to fully dissolve the question of the status of Puerto Rico into the issue of citizenship," adding that "the political status question cannot be reduced to a matter of preserving U.S. citizenship or not" and that "the assertion that the only way to guarantee U.S. citizenship to Puerto Ricans is through statehood is a highly problematic one." To be clear, our letter states that as between statehood and independence, only statehood guarantees citizenship. This is a correct statement of basic constitutional law. It does not reduce the question of status to the question of citizenship, but rather points to the way in which citizenship would be relevant to a preference for a status option.

Seventh, the authors explain that the idea of a constitutional convention is not new, which implies that our letter suggests it is, and they claim that our letter "equate[s] support for statehood with rejection of the idea of a convention." Neither the implication nor the claim is correct. Our letter objects to the proposal for a constitutional convention in the Self-Determination Act for the reason we explain in the letter. It does not imply that the idea of a constitutional convention to resolve Puerto Rico's status is new nor does it express a view on constitutional conventions in general, or even in Puerto Rico.

One final clarificatory point: The authors open by describing our letter as supportive of "a statehood admission bill." This is not exactly inaccurate, but stated in those generic terms, it risks misleading the reader by implying that the bill we support simply admits Puerto Rico into statehood. To be clear, our letter supports the Admission Act in part because it does *not* simply admit Puerto Rico into statehood, but rather calls for a second referendum, in which Puerto Ricans could vote yes or no on statehood once Congress has offered it (as you've all probably grown tired of hearing me say).

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[1] [The following is a condensed version of the earlier post to which the fifth point refers.] The United States has three compacts of Free Association: with the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. Each of these is an *independent country* with a compact of free association with the United States. None of these compacts provides for birthright U.S. citizenship. Free association does not guarantee permanent union or birthright U.S. citizenship prospectively. It does not guarantee permanent union because the parties to a compact of free association are independent sovereigns who retain the power to withdraw from the relationship. It does not guarantee birthright citizenship prospectively because even if the United States were to agree to grant it (which is unlikely, though theoretically possible), the United States would always have the power to stop granting it. In short, although free association status has been described as a "third" option, it is nevertheless a version of independence.