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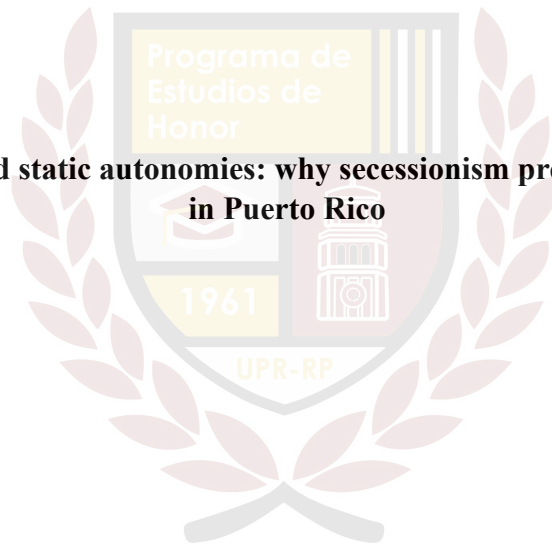
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**Substate nationalism and static autonomies: why secessionism prevails in Catalonia but not  
in Puerto Rico**



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## Abstract

Canadian professor André Lecours' (2021) theory argues that static autonomies stimulate secessionism while dynamic autonomies stave it off. Applied to regions like Catalonia, South Tyrol and Flanders, this theory is accurate. However, it fails to provide a satisfactory explanation for the puzzle of Puerto Rico, an island with a blatantly static autonomy that shows no increase in support for independence. This honor thesis aims at providing a more convincing and well-reasoned explanation of the island's situation. To do so, the Most Different Systems Design is used in order to compare the island to Catalonia, as both are stateless nations with broad dissatisfaction their status quo. After an analysis of the autonomies, it is shown that Catalonia's arrangement was static by design, proving to be a problem when the substate nationalism felt the need to evolve towards broader powers and therefore fueling secessionist tendencies. On the other hand, Puerto Rico's autonomy is not only inflexible, but recently retrenched. In order to understand their reaction to this reality, a change in the dependent variable was warranted. It is concluded that in their quest for self-determination, Puerto Ricans have historically advocated for a relationship with the United States. Therefore, when rejecting the idea of enhancing their autonomy, they tend to favor statehood instead of independence. This is because they still perceive the United States of being able of accommodating and reciprocating their expectations, and the fact that a state of equals with the rest of Americans has always been promised and desired, but never fulfilled due to the colonial roots of their relationship.

## Acknowledgements

As is the nature of these studies and our discipline in general, this dissertation is greatly influenced by the work of other authors. I would like to thank each and every one of them for their contribution to the field and express my most sincere admiration towards them all. I bear responsibility for all errors and misinterpretations in citing them. One of those authors is my mentor Jaime Lluch, whom I especially thank for his openness and guidance during this process. I encountered countless books and journal articles that cited various of his works and that deepened my admiration towards his legacy in this field. I would also like to thank readers Mayra Vélez Serrano and Raúl Cotto Serrano, for whom I hold the upmost respect, admiration, and gratitude. Their input in the various stages of this dissertation has been pivotal. As has been the support given by the UPRRP's Honor Studies Program, a department that has bitten the bullet despite having an upper administration that does not provide or care for its students as it should. Last but certainly not least, I would also like to thank my family, as this dissertation would not exist without their unconditional support.

*Mami, Papi, Fabi, Abuela y todos los demás: gracias.*

## I: Introduction

In the world of compared politics, Catalonia is a region often mentioned in discussions regarding stateless nations, special regions, autonomous regions and so on. Puerto Rico, on the other hand, is not. Insofar as Puerto Rico is seldom included in the discussion, comparisons between the two are obviously non-existent. This shouldn't be of surprise, as they're not as akin with each other as they are with other jurisdictions. Catalonia has the Basque Country and Scotland to be compared to, while Puerto Rico can struggle to find likeness with any jurisdiction due to its singular status within the United States.

However, the core of this investigation puts that notion to a test under the premise that, although very different, Puerto Rico and Catalonia have a singular element in common, strong enough to merit a comparison between them. That is, both are stateless nations with existing political movements motivated by the myriad of possibilities regarding their relationship with their respective central states and specifically their self-government powers. In both cases, the internal debates are both heated and critical, characterized by a deep dissatisfaction with the status quo.

In his book 'Nationalism, Secessionism and Autonomy', André Lecours (2021) points to an inversely proportional relationship between the flexibility of the autonomy conferred to a region and the secessionist tendencies of the nationalist movements within said region: the less flexible an autonomy is, the more its citizens will tend to favor secessionism. This begs the question, can Puerto Rico and Catalonia's national movements be explained by evaluating how

flexible their respective autonomies are? In short, the goal is to test out Lecours' theory using the Most Different Systems Design (MDSD) method.

The aforementioned theory is the latest in a genus of comparative politics that intends to explain the variations between the different cases of substate nationalism within multinational democracies, while paying special attention to the relationship between substate politics and central state politics and other political factors in general.

The main reason for testing Professor Lecours' thesis is the understanding that the way in which he deals with the case of Puerto Rico is unconvincing, while his discussion of Catalan case is not. The *Québécois* professor says that, although the autonomy conferred to Puerto Rico since 1952 has proven to be absolutely inflexible, due to its historic stagnation and recent regression, the internal political environment has led citizens to believe that autonomy has room for improvement. Moreover, their unique standing as United States (US) citizens provides an avenue of escape. Thus, the wave of secessionism that his theory suggests has been avoided. SCOTUS's decision on *Puerto Rico v. Sanchez Valle*, the approval and implementation of the PROMESA Act by the US Congress and various recent plebiscites are only three reasons to doubt this conclusion. On the other hand, Catalonia's case serves as a perfect example of the theory. It therefore seems as though this one-size-fits-all theory doesn't adequately provide for Puerto Rico as it does for Catalonia. For said reasons, Catalonia is intended to be used in this study as kind of a control sample to accompany and complement the analysis of the Puerto Rican case.



In order to properly address the issue at hand, calculated steps have been taken. First, a brief review of the aforementioned genus of theories was deemed necessary in order to properly contextualize this latest approach. Then, the jurisdictions in question were examined in order to determine if and to what extent they are autonomous. Markku Suksi's (2011) work on the matter is extremely helpful for defining the concept of autonomy in this context. Afterwards, the historical behavior of the autonomy of these regions has been evaluated in order to determine their nature; how flexible they are. For Catalonia, the analysis covers the antecedents of the first Statute of Autonomy of the Region, formally enacted in 1979, and recent attempts to reform it. Regarding Puerto Rico, a thorough analysis is done from 1952, year in which Puerto Rico's Commonwealth status was enacted, to the present in order to cover numerous attempts to broaden the island's powers. During both reviews, special attention is placed on monitoring the dominating subnational movement throughout time.

After gathering all this valuable information, the process of theory testing has revealed that both Catalonia and Puerto Rico hold static autonomies. In the case of Catalonia, it seems as the nature of its conferred autonomy might have been rigid since the beginning, as there was no place for national consciousness to grow and reach the status of the majoritarian (Castilian) nation. Nonetheless, a region that was mostly characterized by a strong autonomist stance unequivocally turned to secessionism when reform was denied. On the other hand, Puerto Rico's autonomy has not only been found to be static, but even recently retrenched. Also characterized by a majoritarian support towards autonomism in the past, Puerto Rico has evidently been taking a turn towards supporting annexation to the US. Lecours' (2021) answers as to why support for independence has barely reached above 5% in over sixty years of static autonomy fail to take

into consideration that support for statehood is growing at the expense of autonomism. With this approach, sight of the bigger picture is indeed lost, so a change in the dependent variable in order to analyze the rise in support for statehood is warranted. The typical trifurcation of national movements described by Lluich (2014), alongside his moral polity thesis better describe the developing situation in Puerto Rico. Moreover, a three-dimensional analysis involving electoral results, perceptions of the substate nationalist, and the colonial paradigm offer an explanation as to why Puerto Rico's response to a static autonomy is support for federalism.

### Literature Review

Before establishing a thorough definition for the concept of autonomy, Suksi (2011) admits to the fact that there's no definitive theory surrounding the concept: “[n]o solid theory underpins autonomy or devolution either, perhaps because autonomy arrangements are often very pragmatic *ad hoc* solutions that escape generalizations” (p. 129). To this, Professor Yash Ghai (2013) asks: “[i]f there is no core understanding of autonomy, is there any prospect of a comparative study?” (p. 1). He answers his own question quite favorably, arguing that, while autonomy varies in terms of purpose and institutions, existing and substantial commonalities and dissimilarities between each case justify comparative efforts (Ghai, 2011, p. 1).

To establish his own definition, Suksi (2011) alludes to a gradient between classic federalism and regional self-government in the administrative level (p. 125). The two ends of this gradient mark a continuum in which a plurality of mixed and hybrid models are contemplated and recognized (p. 131). Following this logic, Suksi sees fit to first define classical federalism in order to extract a definition for autonomous arrangements.

There are two main criteria that place a region more to the autonomic side, according to Suksi (2011, p. 130). First, he understands that the region would not have official representation in the central state legislature, although they might have certain seats to choose from, in order for them to choose their own government and also participate in national elections in the same way as the other “regular” units of the central state (Suksi, 2011, p. 130). Next, the autonomous region must have special enumerated legislative powers in certain matters, while the central state reserves general or residual competences to itself (Suksi, 2011, p. 130). “The idea underpinning this characterization is that the substate entities do not possess any original sovereignty: they are constitutionally created and defined entities entrusted with powers transferred to them from the central government” (Suksi, 2011, p. 130).

On the other hand, South Tyrolean political researcher Thomas Benedikter (2009) has compiled a web of definitions in order to discuss modern autonomous systems across the globe. Due to procedural constraints, it is best to present this general definition of autonomy:

Hence, autonomy can be defined as a means of internal power-sharing aimed to preserve the cultural and ethnic variety, while respecting the unity of a state. Autonomy thus consists in permanently transferring a certain amount of powers suitable for those purposes to a certain territory, giving its population the possibility of self- government, and leaving only residual responsibilities to the central state. (p. 19)

Regarding modern autonomy specifically, Benedikter (2011) states that it must follow up with four requirements: the modern autonomy must be incorporated into a state through a national constitution and a rule of law that possesses an independent judiciary and horizontal division of

powers, the autonomous assembly must be chosen freely by its citizens and should have the enduring devolution of legislative powers, it needs to have a democracy that, while respecting civil and democratic liberties, practices free and fair elections; and there ought to be equality of fundamental political and civil rights between the state and the autonomous entity and for all citizens legally residing in the territory (Benedikter, 2009, p. 60). Within Benedikter's analysis, he also studies Catalonia and other regions (p. 65).

Historically, Catalonia has experienced around 700 years of self-government with its own institutions (Barcia, 2014, p. 400). The region continued to be a very important independent state with its own constitutional regime despite after the union of the kingdoms of Castile and Aragon (Barcia, 2014, p. 400). It was not until the War of Secession in the eighteenth century that, by losing the war, they lost their administrative, jurisprudential, fiscal, monetary and economic autarchy (p. 400)

In the nineteenth and twentieth centuries, Catalonia witnessed a rise in its nationalism, which took the form of a political movement. This period, known as the “Renaixença,” coincides in time with the industrial and economic development of the region, making it more advanced and prosperous than Spain (Barcia, 2014, p. 400-401).

It is in this period that the Catalan autonomy begins to evolve. The bourgeoisie of the region aspired to increase their influence and sovereignty within the structure of a central government. This influence was mainly motivated because of the idea of Spaniards facing a "regression" in the region itself. (Lecours and Dupré, 2020, p. 14). Accordingly, as Lecours states, Catalan nationalism has historically supported the search for autonomy within Spain. (2020, p. 14).

The creation of Esquerra Republicana de Catalunya (ERC) in 1931 pointed to a more radical form of left-wing nationalism, but calls for Catalonia's independence were rare for most of the 20th century, even in the context of the Franco dictatorship. (Lecours y Dupré, 2020, p. 14)

Greer (2007) states that when Francisco Franco passed away in 1975, Spain was involved in a powerfully centralized dictatorship that enabled hostile repressions concerning national identity and autonomy in Catalonia and the Basque Country (p. 93). Repression included economic discrimination, bans against the Catalan language, police brutality, and extremely centralized public policies (Greer, 2007, p. 93). Marta García Barcia (2014) catalogs this as one of the darkest periods in Catalan history (p. 401). "Yet Catalan political forces emerged within months of Franco's death. Within five years, the new Spanish constitution recognized Catalan autonomy, the Catalan government (Generalitat) from the 1930s was recreated, and moderate nationalists had won the first elections (Greer, 2007, p. 93). The new Parliament created the *Comisión de los Veinte*, a commission of experts authorized to start drafting a new Statute of Autonomy (Juberías in Ghai & Woodman, 2013, p. 235). As a result, a Statute approved by the Parliamentary Assembly on December 16, 1978, the Constitutional Commission of Spain on August 13, 1979, and by the people of Catalonia on October 25, 1979 was proclaimed (p. 235).

Regarding Puerto Rico, it is appropriate to begin the analysis with the fact that, to delimit his take on modern autonomies, Benedikter's (2009) distinguishes between autonomy and "other forms of power distribution" (p. 22). Within these distinctions or categories there are arrangements like classical federalism, asymmetric federations, reserves, regional democracies,

micro-states, associated states, among others (Benedikter, 2009, p. 22-27); Benedikter places Puerto Rico in this last category.

Puerto Rico was one of the territories discovered by Christopher Columbus and colonized by Spain in 1508 (Benedikter, 2009, p. 196). Along with Cuba, the island was a Spanish possession up until 1898 and one of the last Spanish colonies in the New World (Benedikter, 2009, p. 196). Puerto Rico enjoyed autonomous or semi-autonomous status for various instants within the 19th century and in the year 1897, Spain granted the island an important charter of self-government (Benedikter, 2009, p. 196). Lecours and Vézina (2017) agree with Benedikter in saying that Puerto Rico was granted this autonomy and give an insight as to what actually occurred:

That year, as the last pieces of its colonial empire were falling, Spain allowed for Puerto Ricans to have representation in Madrid, an autonomous government and its own constitution (Fernandez, 1992). However, this moment of partial emancipation was short-lived as the Spanish-American War resulted in Puerto Rico being given to the US as “compensation” for financial and material losses incurred during the conflict. (p. 1084)

On July 25th, 1898, General Nelson Miles led the operation to enter the coast of Guánica (a municipality in the southwest of Puerto Rico) and it is reported that he was greeted by such an ecstatic population that he was forced to contact the War Department for more United States (US) flags (Torruella, 2018, p. 71).

However, as soon as the US acquired Puerto Rico (along with Guam and the Philippines) an internal debate brewed concerning how these new territories would fit within the American

constitutional framework (Rivera-Ramos in Ghai & Woodman, 2013, p. 92). “Both Congress and the Supreme Court eventually provided the answers that have constituted the basic framework for the constitutional governance of Puerto Rico until this day.” (Rivera-Ramos in Ghai & Woodman, 2013, p. 92). Initially, they established a military government in the island. However, in 1900, Puerto Rico’s first Organic Law laid the grounds for a civil government (McCall, 2017, p. 1373). The Foraker Act allowed the presence of a bicameral legislature, a judiciary, and a governor; all except the members of the lower legislature were chosen by the US federal executive (McCall, 2017, p. 1373). “Bills passed by this insular Legislature might be amended or repealed by the Congress of the US” (de Galindez, 1954, p. 332) Moreover, through the creation of the Office of the Resident Commissioner in Washington, Puerto Rico was given a “voice” in Congress (Lecours & Vézina, 2017, p. 1084).

Shortly after the approval of the Foraker Act, a series of decisions made by the Supreme Court of the US (SCOTUS) clarified the relationship between the two parties (Lecours & Vézina, 2017, p. 1084). Among the jurisprudence established in the so-called Insular Cases is the fact that Puerto Rico is fully bound to the plenary powers of Congress, that Puerto Ricans shall possess “certain rights”, that they are not foreigners in relation to the US and, most notably, Puerto Rico belongs to, but is not part of the US (Fernandez, 1992, Rivera-Ramos, 2013 and Lawson y Slone, 2009 as cited in Lecours & Vézina, 2017, p. 1084). In 1917, the approval of the Jones Act granted the American citizenship to Puerto Ricans and the possibility of them being equal to all Americans by moving into the US (Lecours y Vézina, 2017, p. 1085). This act also introduced a redacted Bill of Rights, a re-structured House of Representatives (previously known as *Cámara de Delegados*) and a new, democratically elected Senate (Cox Alomar, 2022, p. 62). In spite of

these structural and nominal changes, Cox Alomar (2022) notes that the Jones Act did not alter the Puerto Rico's relationship with the United States in relation to the Foraker Act, as it was still an unincorporated territory as per the Insular Cases (p. 65). Torruella (2018) also notes the aforementioned changes brought within the Jones Act, and highlights extension of the Resident Commissioner's position to a four-year term (p. 73). He later goes on to say that Jones Act was later replaced by "the latest and perhaps most inscrutable of the colonial experiments enacted by Congress for ruling Puerto Rico, the so-called 'Commonwealth of Puerto Rico'" (Torruella, 2018, p. 74).



### **Theoretical Framework**

This investigation starts off with Professor Lecours' (2021) theory as a given: "[s]tatic autonomy stimulates secessionism while dynamic autonomy staves it off" (p. 189). While there are some caveats, the core of the theory is that an autonomy can remain exactly as conceived without allowing any type of change or it can evolve with the times: the more stagnant and change-adverse it is, the more it fosters secessionist tendencies in subnational movements and viceversa. As mentioned in previously, this theory is the latest product of a clear genus within comparative politics that aims to explain variations between the different cases of substate nationalism within multinational democracies while paying special attention to the relationship between substate politics and central state politics and other political factors in general.

Within this genealogy we find the work Michael Hechter's (2000) theory on direct and indirect rule and the origins of nationalism and his argument regarding federalism/ decentralization and the amelioration of secessionism, Alain Gagnon et al. (2003) and their work



on majority nationalism and its effect on minority nationalism, Kristin Bakke's book (2015) on decentralization and national conflict in Chechnya, Punjab, and Quebec, and Jaime Llach (2014) with his work on the internal variation in substate nationalism and his moral polity thesis. These contributions are noteworthy theoretical innovations in the study of nationalism given that much of the literature related to this topic relies on mechanistic and deterministic accounts of the relation between national consciousness and secessionism, or offers an overly deterministic relationship between economic rationality and secessionism.

The foregoing discussion suggests the following hypothesis: If Catalonia and Puerto Rico can be considered autonomous regions, Lecours' theory does a good job explaining the Catalan situation, but the same cannot be said for the Puerto Rican dilemma. While it can be demonstrated that both of them are rigid autonomies, a thorough review of the United States' relationship with Puerto Rico suggests that the reason why secessionism on the island is scarce is not the perception that something might or even can change.



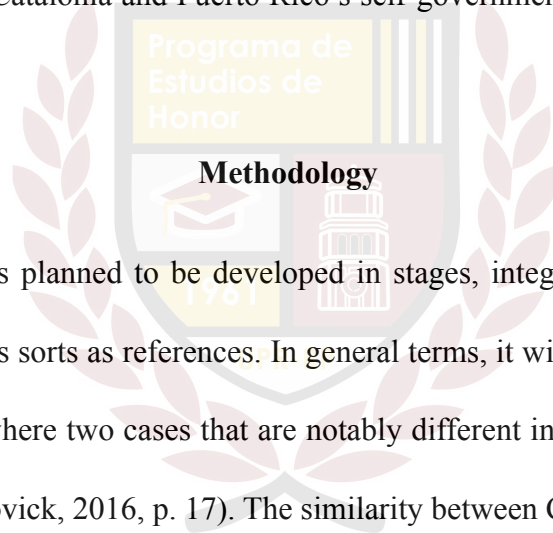
**Justification**

From both an academic and theoretical point of view, this investigation is very novel. First, as outlined in the introduction, the inclusion of Catalonia and Puerto Rico in the political and academic debates on self-government, sovereignty, and others, is somewhat common. Similarly, it is common to find analytical breakdowns of the government situation in both regions. Nevertheless, attempts to fully compare the two jurisdictions seldom occur.

On the other hand, there are a variety of studies that try to define, and in some cases contribute to the new solutions for Catalonia and Puerto Rico. However, only Lecours truly tries

to explain the new routes proposed from a historical and linear standpoint. Regardless of these contributions, Lecours' conclusions on Puerto Rico, while factually correct, lack further analysis on certain issues.

Given these motives, the goal of this study is to put Lecours' theory to the test again while expanding the scope of analysis on the flexibility of both autonomies. The investigation itself proposes to explain the reasons why the political scientist is right or wrong. Apart from this, another important motive behind this study is the need to contribute positively to both the field of comparative politics and Catalonia and Puerto Rico's self-government issues, by offering a fresh perspective of the matter.



This dissertation is planned to be developed in stages, integrating legal documents and academic works of various sorts as references. In general terms, it will follow the MSDS method of comparative politics, where two cases that are notably different in almost everything except a particular outcome (Dickovick, 2016, p. 17). The similarity between Catalonia and Puerto Rico is that they are both stateless nations with ongoing polemics regarding their autonomy. Moreover, Lecours suggests that they are both static autonomies with dissatisfaction regarding their current arrangements, and political movements as that can be explained within the bounds of his theory. As mentioned before, this investigation is based on the premise that, in the case of Puerto Rico, the last part of the assertion is questionable.

To answer the question, Markku Suksi's (2011) definition of autonomy will first help establish that if and to what degree Catalonia and Puerto Rico are autonomous. Assuming that

they are, a combination of legal documents and academic works will fuel a historical review aimed at evaluating the nature and flexibility of their self-government. Special attention will also be placed on determining the majoritarian political current throughout the time period at hand. Constitutions, laws, books, encyclopedias and academic articles are some of the resources to be used for these purposes.

Evidently, the review will be done in chronological order and focused on periods that are relevant to the query. Regarding Catalonia, the review must pay attention to the decade when Catalonia regained its autonomy and span all throughout history until 2017, year in which self-government related turmoils reached an all-time high. Within this period lies the reformed Statute of Autonomies of 2006, the Constitutional Court's reply in 2010 and the search for a favorable fiscal pact in 2012. The same goes for Puerto Rico, as thorough analysis will encompass 1952 onwards.

After both autonomies have been thoroughly discussed, theory testing will take place. Here, comparisons between the two regions will be useful to determine if the theory at hand is correct or not. In the event that the answer is negative, this thesis has the academic duty to explain why this is the case.

## II: Defining Autonomy

The first challenge this dissertation formally encounters is defining the concept of autonomy. After all, it is one of those concepts that is generally but not accurately understood. A thing that really has to be understood here is that the facet of the concept in question is not the philosophical one, but rather the political and governmental one. Notwithstanding, the philosophical approach to autonomy can help to introduce the definition that is being pursued. Following the etymology of the word (*autos* meaning self and *nomos* meaning rules) the most basic conception of autonomy refers to a characteristic that enables an individual to choose how to live their life according to their will and self-determined goals (Raz in Parchomovsky & Stein, 2021, p. 65-66). Therefore, in the most basic sense, talking about autonomy means talking about a quality of self-rule and self-determination.

Now, it is imperative to define the operational context of the concept in this study: what is the definition of autonomy going to be used for?, or better yet, what is the question it will try to answer? This approach is logical and convenient, and it strives to minimize any sort of straying. In treating autonomy as a quality, the definition established in this section has to answer the question of “does ‘X’ nation have autonomy?” Put differently, the goal is to be able to construct a definition that can answer the question as to who is an autonomous region and who isn’t.

In *Sub-State Governance through Territorial Autonomy*, Markku Suksi (2011) goes through great theoretical lengths to try and formulate a definition for territorial autonomy. After all, “the concept of autonomy is not quite as clear-cut, but requires specifications in relation to,

*inter alia*, adjacent forms of substate governance, most notably federalism” (Suksi, 2011, p. 81). This means that the author deems necessary to employ a strategy of definition by negation in order to come to a true understanding of territorial autonomy.

“[A]lthough there is no completely coherent theory of federalism, a core definition of a federation might contain two different elements”, says Suksi (2011, p. 126). First, the legislative body has to comply with a certain structure regarding membership, in order to ensure effective government (Wheare in Suksi, 2011, p. 87). Generally speaking, the ‘Upper House’ is comprised of an equal number of seats for each constituent state, while the ‘Lower House’ is composed of members elected or appointed directly by the people, following a notion of proportional representation of the population. The theory behind the former chamber is to provide an equal (or in the case of Germany, less than equal) representation for all the constituent states at the federal level (Suksi, 2011, p. 126).

The other element that is generally characteristic of a federation is the enumeration of competences for the central authorities which, in theory, has been granted to them by the constituent states (Suksi, 2011, p. 126). In turn, the Finnish professor explains that these states are in charge of residual powers, granting them a general competence over everything not reserved to the federal level (Suksi, 2011, p. 126). The idea behind this division of powers and competences is so that the constituent states retain at least some of their original sovereignty, which is already being circumscribed by the federation (Suksi, 2011, p. 126). For instance, says Suksi (2011), “the amendment of the federal constitution will generally require the participation and consent of the constituent or component states...” (Suksi, 2011, p. 127). One last important

characteristic the author behind federations is that, whenever there's conflict between constituent states and central power, the latter always takes precedence: "federal law breaks state law" (Suksi, 2011, p. 128).

It is evident that the arrangement previously described does not encompass all existing governments, nor does it mean to. There is another form of arrangement that specifically emanates as a solution to guarantee the survival of a nation under at least one of these basic issues: "language; education; access to governmental civil service, including police and security forces, and social services; land and natural resources; and representative local government" (Hannum in Suksi, 2011, p. 102). This is what's known as autonomy. Unsurprisingly, though, there is no solid theory behind it, "perhaps because autonomy arrangements are often very pragmatic ad hoc solutions that escape generalizations" (Suksi, 2011, p. 129).

Hence, the definition by negation strategy starts to become efficient because Professor Suksi (2011) postulates that, if a provisional definition of autonomy were to be developed, the starting point is a reversal of the relationship between central and substate government (p. 130). In such arrangement, inhabitants of the autonomous territory would elect their own officials and participate in national elections as the other citizens, but would not enjoy official representation as a substate entity and their legislative competences would be enumerated rather than residual (Suksi, 2011, p. 130). This is because, as opposed to the states comprising a federation, substate entities with autonomy do not possess any original sovereignty and wouldn't have influence in central government matters either, other than their own autonomy charter (Suksi, 2011, p. 130-131).

It is with these notions that Suksi develops what he refers to as a continuum, polarized by the substate arrangements of classical federation on one end and territorial autonomy on the other. By nature, the proposed gradient admits a wide range of hybrid models to be described within the confines of the two described models of substate organization (Suksi, 2011, p. 131).



### III: A Genus of Theories Explained

As mentioned in previous sections, the theory to be tested in this investigation is the latest development in a genus of theories regarding the variations of substate nationalism in multinational democracies. These theories characterize themselves by focusing on political factors rather than sociological ones. Specifically, they place emphasis on the relation between central and substate politics and the fact that both perceptions and mutual interactions between the two are critical for explaining said variations. Within this genus of theories we find authors like Michael Hechter, Kristin Bakke, Jaime Lluch, Alain Gagnon and André Lecours himself. The aim of this section is to explain the aforementioned lineage by going over the main points of each relevant work and pointing to the specific features that have influenced the study of substate nationalism variations within multinational democracies into what it is today.

#### Federalism as a means of accommodation

In his book *Containing Nationalism*, Michael Hechter (2000) defines nationalism, its emergence and facets in order to present various ways to ameliorate what he calls an “often by-product of nationalism”: violence (p. 5). Along these lines, he arrives at two important conclusions relevant to our topic: direct and indirect ruling as pivotal to primary state formation and nationalism surge; and, as a consequence, federalism as a plausible solution to “curtail nationalist excesses” (Hechter, 2000, p. 19).

To introduce his theory on the birth of nationalism, Hechter (2000) recognizes that, while it is widely regarded as a modern phenomenon, there is not much consensus on its provenance (p. 35). Some regard it as an unintentional byproduct of the French Revolution or a consequence



of 19th century German Romanticism, while others point to the new social structures that emerged during the era of industrialization. However, the author briefly quashes these beliefs and, following discussions about group formation, he uses his own definition of nationalism to introduce his argument. If nationalism is collective action designed to make the boundaries of both the nation and governance unit congruent, says Hechter (2000), then it can only emerge when there is a disjuncture between the two (p. 36). “For the greater bulk of human history no such disjuncture existed, however” (Hechter, 2000, p. 36).

The blame for this long-lasting congruence is to be put on indirect rule, which only started to lose ground in the 19th century when governments started to favor direct rule. Following a slightly edited Hobbesian understanding of state formation, in which the individual conforming the social contract is substituted by high solidarity groups, the grounds behind an early favor of indirect rule are purely related to the technical limits of maintaining order at the time (Hechter, 2000, pp. 42, 53). Therefore, regardless of the form, indirect rule inhibited nationalism insofar as the delegated exercise of state power maintained the boundaries of the governance unit close to those of the nation by precluding a demand for national sovereignty (Hechter, 2000, pp. 45, 54). When modernity allowed states to exercise a more direct rule, the congruence between the boundaries faded and nationalism emerged.

The aforementioned understanding carries on throughout his book and serves as a basis for his ultimate goal: containing the dark side of nationalism (Hechter, 2000, p. 134). “The best hope for containing the destructive elements of nationalism therefore hinges on conditions that decrease the demand of sovereignty among national group” (Hechter, 2000, p. 136). To this

effect, he proposes several institutional arrangements to curtail nationalism excesses rather than other solutions like increasing collective action costs and lowering the salience of national identity (Hechter, 2000, p. 134). After discussing consociationalism and alternative electoral systems, Hechter proposes federalism —an institutional arrangement of indirect rule— as an alternative (Hechter, 2000, p. 136). He does, however, admit that the nature between federalism and nationalist conflict is still up for debate (Hechter, 2000, p. 140). For one thing, the primary state-building theory suggests that indirect rule ought to reduce sovereignty demands and, accordingly, “[t]he less self-governance a nation has in a multinational state, the greater the possibility of nationalist conflict” (Hechter, 2000, p. 143). However, the diversion of resources from center to subunit may provide nationalist leaders with means to mobilize their supporters towards undesired ends, meaning that local leaders should be offered important careers in the central government to avoid this (Hechter, 2000, p. 141).

New empirical evidence at the time suggested a reconciliation of these two arguments, in the sense that the allocated resources could provide for collective action and protests but the increase in sovereignty and uncertainty of secession would subdue rebellion (Hechter, 2000, p. 146). The then recent case of Yugoslavia brought yet another conclusion about federalism’s ability to ameliorate nationalist excesses: “[i]f too little decentralization causes rebellion, then too much is likely to endanger fragmentation” (Hechter, 2000, p. 152). It is then clear that federalism, while offering some hope for mitigating the darkness of nationalism, it is not a ‘one size fits all’ solution (Hechter, 2000, p. 152).

What is also clear is that Hechter's theory of primary state formation and the resulting proposal of federalism as a solution to nationalism's decadence is a clear axiom in Lecours' latest theory. This is because Lecours' theory of static and dynamic autonomy exists only because there is an underlying premise that indicates that indirect rule is a dissuasive force against extreme nationalism. While it is evident that the *Québécois* professor takes this notion much further, it can be said that its origins lie in Hechter's *Containing Nationalism*.

### **A broad understanding of nationalism**

On the other hand, *Contemporary Majority Nationalism* presents itself as an anthology of works by different authors, edited by Alain-G. Gagnon, Geneviève Nootens and André Lecours. The premise of this book stands as a challenge to the mainstream understanding of nationalism as being primarily associated with minorities and opposition to the central state. This is done through an introduction and a thorough description of majority nationalism, accompanied by theoretical discussions on identities, diversity, modernity, accommodation, national majorities and nationalism itself; and various chapters of case studies in countries such as Canada, England and France. The introduction of the notion of majority nationalism to the current era poses a paradigm shift for a field that mainly believes it to be extinct in liberal democracies (Gagnon et. al., 2003, p. 4). It is also an essential contribution to the understanding of nationalism itself, as it is too often judged as retrograde and tied with minorities contesting their terms of integration to the state (Gagnon et. al., 2003, p. 15).

Majority nationalism is nothing less than the manifestation and projection of nationalism by a central, consolidated state (Gagnon et. al., 2003, p. 4). It is not often understood as

nationalism, as it is mask as legitimate. For one, “strengthening the allegiance to the state is seen as the expression of a legitimate national feeling, namely, patriotism, while, conversely, contesting the state is invariably dismissed as the manifestation of a reactionary trend, namely, nationalism” (Dieckhoff in Gaignon et. al., 2003, p. 7). Also, the state usually claims to be the locus of egalitarian relationships with and between citizens (Dieckhoff in Gaignon et. al., 2003, p. 7). Therefore, it would be seen as absurd to think that the state should have its own nationalist favors.

It is evident that Lecours embraces this understanding in his theory on static and dynamic autonomy, insofar as its relationship with nationalism takes into account the fact that the interactions between sovereignty-seeking minorities and the center government are nothing less than interactions between majority and minority nationalisms. These interactions are primarily characterized by the majority’s attitude and actions towards the minority. As explained by Coakley, the minority can be recognized by the majority and either be included in the constitutional framework or barred from the whole political process, and it can also go unrecognized altogether, which would could suggest processes of assimilation (Gaignon et. al., 2003, p. 104). Therefore, it is this recognition (or lack thereof) that will determine the arrangement for the minority and, according to Lecours, the nature and flexibility of said arrangement will determine the levels of nationalist turmoil.

### **The data-supported reality of decentralization**

Next, Kristin Bakke (2015) presents a compelling and statistics-backed argument regarding the gap between the popular understanding of decentralization as a “panacea for

internally divided and conflict-ridden states” and its “mixed peace-preserving record” (p. 2). In *Decentralization and intrastate struggles: Chechnya, Punjab, and Québec*, the Norwegian professor combines a statistical study of twenty two federal states in a span of over twenty years with in-depth case studies of the Chechen region in Russia, the Punjabi region in India and *Québécois* region in Canada. Bakke (2015) claims this approach enables her to “...assess general relationships among institutions, societal traits, and conflict, as well as pay close attention to how societal context affects the working of institutions. Each method compensates for the weakness of the other.” (p. 29).

Bakke (2015) starts her argument by stating that, although peace-preserving at times, decentralization is not a one-size-fits-all fix for divided societies (p. 3). Therein, decentralization is not analyzed to see whether it is good or bad at containing violent conflict and preserving peace; the mission is to understand the conditions under which it does (Bakke, 2015, p. 241). After extensive testing, the author arrives at the conclusion that decentralization has different effects in different societies and breaks down the different aspects of autonomy to explain these findings and give validity to her hypotheses (Bakke, 2015, p. 241).

“[A] society’s ethnic composition and distribution of wealth affect the degree to which policy, fiscal, and political autonomy can help preserve peace.” (Bakke, 2015, p. 241). This, as Bakke calls it, is the short version of the answer to her question. Within this answer, the disaggregation of the concept of decentralization can be appreciated: “policy decentralization (which level of government does which tasks), fiscal decentralization (which level of government pays for public goods provision and from which sources), and political

decentralization, here captured by the political ties between tiers of government” (Bakke, 2015, p. 241-242).

Regarding policy decentralization, the effectivity in creating and preserving peace hinges on ethnic recognition. Indeed, the effectivity of granting regional governments control over policy areas that matter for the recognition of ethnic and regional minority groups (language, education, religion...) in hopes of preserving peace depends on the demographics and basis for solidarity of the group seeking self-determination (Bakke, 2015, p. 242). Therefore, cultural policy autonomy may ameliorate self-determination demands if the claim is made on behalf of an ethnically homogenous minority region or the basis for solidarity emphasizes the group’s cultural survival, or it could have minuscule effects if the region in question is ethnically diverse and the basis for solidarity hinges on the group’s physical survival (Bakke, 2015, p. 242). Of the three case studies in this book, Quebec is a textbook example of cultural policy autonomy stemming self-determination claims. However, Bakke (2015) notes that the Canadian federal government’s continuous attempts to bypass provincial policy autonomy through federal programs and overall spending show that while cultural policy autonomy can mitigate self-determination claims and conflict, it needs to clearly state where responsibility lies (p. 242).

The second part of Bakke’s argument focuses on perhaps the most important aspect of decentralization; fiscal autonomy. Of course, while general policy autonomy has the potential to meet self-determination demands, it means nothing in the absence of money to spend on operationalizing said autonomy (Bakke, 2015, p. 255). The effect that fiscal decentralization and autonomy has on a region highly depends on the region’s wealth, as well as their perception of

wealth: if a region is poor, relying on its own revenue rather than on transfers from the central government to cover expenditures will probably hinder its ability to implement policies, fueling grievances related to poor public goods provision and fostering a sense that it is not receiving a fair share from the center and that they would be better off on their own (Bakke, 2015, p. 255, 261). However, highly-developed regions are likely to favor fiscal autonomy as they are better able to fund public goods and enable policy autonomy from their own revenues; in the absence of fiscal autonomy, this type of region may decide it would be better off as an independent state (Bakke, 2015, p. 255). In all three case studies, fiscal decentralization was at the center of the self-determination struggles: while Punjab and Quebec focused on the language of fiscal federalism, Chechnya struggled with its central state's redistribution (Bakke, 2015, p. 255).

Moreover, assuming that political party ties between tiers of government provide institutional channels for intergovernmental bargaining and bring incentives to consider each others interests, Bakke (2015) asks to which extent these relationships reduce the chances of violent conflict (p. 263). The research reveals this correlation to be positive, as political ties across tiers of government can help ensure that intergovernmental bargaining takes place through institutional channels and foster political interdependence and incentives for both regional and central elites to respect the state's integrity (Bakke, 2015, p. 263). However, the author also points out that copartisan ties between regional elites and the center government can foster conflict in the long run if said elites are bound to the center rather than their constituents, as was the case in Chechnya (Bakke, 2015, p. 266).

These notions fit perfectly in this genus of theories and, of course, they play a big role in Lecours' theory regarding static and dynamic autonomy. By stating that decentralization is not a one-size-fits-all solution for peace-seeking but rather contingent on a region's ethnic makeup, wealth and political ties to the center, Bakke places emphasis on elements that are fluid by nature. For example, Quebec's changing ethnic demographics reshaped the self-determination demands: whilst in the past it was mostly about cultural policy accommodations for the Francophone population, the growing immigrant population has put social policies in the forefront of the conversation, which is something for all *Québécois* and not just the Francophones (Bakke, 2015, p. 243). This is consistent with Lecours' theory in the sense that, for autonomic arrangements to be dynamic in nature and be engineered to provide for a plethora of self-determination necessities overtime, there has to be an understanding that the populations that these institutions serve are indeed constantly evolving, growing and changing, rather than being monolithic, having just one issue resolved and not needing anything else. The "neither good nor bad" approach towards judging specific decentralization arrangements is also patent in Lecours' understanding of the subject (Lecours, 2021, p. 195).

### **Visions of sovereignty and the moral polity thesis**

Lastly, Jaime Lluç's book *Visions of Sovereignty* is without a doubt the most patent precursor to Lecours' theory on static and dynamic autonomy. By itself, *Visions of Sovereignty* an innovative take on the study of variations in substate nationalism. Rather than focusing on variations among nationalist movements, Lluç (2014) focuses on uncovering a vastly unresolved and under-theorized area of study: the sources and patterns of within-case variation in



national movements (p. 4). The author sets out to explore the “why” behind typical “trifurcation” that occurs within national movements, where nationalists are found favoring one of three visions of sovereignty: autonomism, independence or federalism. Quebec (Canada) and Catalonia (Spain) were chosen to be the epicenters of this study because of their tendency not to dilute themselves in ethnic differences or violence as a means to acquire political capital; their nationalist movements, enclosed in well-established democracies and developed socio-economic conditions, rather focus on solving the “nationalists’ dilemma: what path to take at a political crossroads with three intersecting paths (Lluch, 2014, p. 23, 266). They were analyzed through several years worth of fieldwork, including over 40 interviews with high party leaders of eight different political parties and countless questionnaires and focus groups with the militants of said parties.

The explanation Lluch (2014) gives to intra-substate nationalist variation is rooted in a concept known as “moral economy”, best represented by historian Edward P. Thompson while writing about the development of the English working class between 1780 and 1832 (p. 28). Pitted against historians who presented an “abbreviated view of economic man”, Thompson stated that the grievances presented by eighteen-century colliers in England operated within a popular consensus as to what were legitimate and illegitimate practices in marketing, milling, baking etc. (Thompson, 1971, p. 79 in Lluch, 2014, p. 29). By placing focus on social norms and moral assumptions about mutual reciprocities and notions of commonweal, Thompson’s approach helps to understand subordinate groups’ social and cultural world and how said moral assumptions shape their political mobilization efforts (Lluch, 2014, p. 29).

As a result of his study, Jaime Lluch's moral polity thesis stresses that the nationalists of stateless nations "have developed expectations about what is fair treatment by the central state and notions about what obligations emerge because of common membership in the same state". (Lluch, 2014, p. 267). Therefore, these nationalists consider themselves inhabitants of a moral polity where social reciprocities are expected and notions of collective dignity, commonweal and mutual accommodation are essential to guarantee mutual understanding and solidarity (Lluch, 2014, p. 268). The perception by these nationalists that their expectations of reciprocity have been violated is a key factor that contributes to the increasing radicalization of their political preferences (Lluch, 2014, p. 268). Thus, four sequential stages of development within subnational politics (preexistent ideology, the occurrence of a central state constitutional moment, an impulse from civil society, and the consolidation of a new leadership nucleus) result in this "tipping point" moment (Lluch, 2014, p. 269).

The central findings of *Visions of Sovereignty* directly correlate with Lecours' theory. The implications of the moral polity thesis suggest that, if central state managers desire to encourage the development of national movements towards a less radical direction and thus contain the proliferation of secessionism, they should encourage institutional and political developments that promote plurinationalism and recognition (Lluch, 2014, p. 263). This is because, according to Lluch's findings, both independentists and strong decentralizers (sovereigntist autonomists and radical asymmetric federalists) form their preference due to a perception that the central state is unwilling to accommodate their society as a national community (Lluch, 2014, p. 263). The notion that both recognition and accommodation foster less radical tendencies is the bedrock of

Lecours' theory, which suggests that an arrangement that is flexible enough to provide for the nation's needs over time is an arrangement that will stave off secessionism.

As it has been demonstrated, André Lecours' latest book on substate nationalist variation is nothing less than a new development in a field that is constantly innovating. By no account does the understanding developed in this section intent to diminish his latest work; it strengthens it by identifying and validating distinct axioms that support his claims.



## **IV: Autonomy of Catalonia**

On October 1st, 2017, the world turned to the Autonomous Community of Catalonia as the Spanish government took over polling centers and adjacent streets in an effort to halt a referendum regarding the region's independence. Images of the Spanish National Police smashing into the polling center that Carles Puigdemont, then President of the Generalitat, echoed throughout the global media as a democratic state condemned this sort of voting as illegal. Indeed, the Spanish Constitution of 1978 is "based on the indissoluble unity of the Spanish nation, the common and indivisible country of all Spaniards" (Art. 2), and a public vote regarding Catalonia's future as a independent republic was certainly a threat in this regard. This was yet another attempt in Catalonia's quest for self-determination that dates back to La Renaixença, when they first intended to broaden their autonomy within the Spanish Government. The aim of this section is to discuss Catalonia's relationship with Spain throughout recent history in an effort to shed light on the nature of their arrangement.

### **Antecedents to the Statute of Autonomy**

After the dictatorship of General Primo de Rivera, Catalonia was benefited by the proclamation of the Spanish Second Republic as a 'comprehensive state', declared "compatible with the autonomy of municipalities and regions", thus laying the foundation for the approval of various Statutes of Autonomy, including one for Catalonia (Juberías in Ghai & Woodman, 2013, p. 231). Almost unanimously supported by an outstanding voter turnout of 75%, the Statute underwent substantial editing before being proclaimed on September 9th, 1932 (Juberías in Ghai & Woodman, 2013, p. 231). The Statute, although suspended between 1934 and 1936, gave the

Catalan government jurisdiction over fields such as civil law, public works, and some aspects of taxation (Lecours, 2021, p. 47). However, the Statute was effectively nullified in 1939, when Franco entered Barcelona (Juberías in Ghai & Woodman, 2013, p. 232).

Following the death of “El Generalísimo” in 1975, there was a widespread call for political change within Spain: the demand for autonomy was voiced with the same force, if not with more passion, as claims for party pluralism, free elections, government accountability, political rights and amnesty for political prisoners (Juberías in Ghai & Woodman, 2013, p. 232). Francoism, in spite of multiple attempts to adapt itself to the changing domestic and international landscape, was ill-suited to rule a country that had shifted from a rural economy to an industrial one that was partially led by Catalonia (Guibernau, 2004, p. 70).



### **The transition: a new era**

In July of 1976, King Charles I selected Adolfo Suárez as the country’s new leader (Greer, 2007, p. 99). Suárez’s government was greeted on September 11th, 1976 by a giant demonstration organized by the *Assemblea de Catalunya*, a political organization composed by clandestine, union, professional, academic, cultural and media leaders (Greer, 2007, p. 99). This demonstration made it clear that the regime would have to negotiate Catalan autonomy to make the transition happen (Greer, 2007, p. 100). Concretely, the *Assemblea* had specific demands of democratic liberties, release of political prisoners and a grant of autonomy at least equivalent to the Statute of Autonomy (Greer, 2007, p. 99). The first concession came in the form of a restored Generalitat headed by exiled president Josep Tarradellas, which signaled a legitimization of the Second Republic institution and a symbolic recuperation of Catalan autonomy (Greer, 2007, p.

104-105). Subsequently, an “odd compromise” in the form of Spain’s new Constitution was reached in a consensus between Francoist reformists and anti-Francoists groups (Greer, 2007, p. 109; Guibernau, 2004, p. 72). Within a constitutional arrangement that licensed regions to extract powers from the existing levels of government while negating them a significant role in central state restraining, Catalonia finally had the authority to be autonomous in the strict sense of administering itself (Greer, 2007, p. 110).

Therefore, the next phase in the transition in Catalonia was the drafting of a Statute of Autonomy for the region (Dowling, 2014, p. 115). Constitution drafters Jordi Solé Tura and Miquel Roca i Junyent led a group of politically prominent Catalan jurists in the town of Sau and applied what Solé Tura called “the mirror method” to produce an inverse draft of the Spanish Constitution and claim any power not turned over to the central state (Greer, 2007, p. 111). Thus, they seized the opportunity to take and codify the highest level of competencies already offered in the Constitution, sealing the agreement and producing an uneventful period of negotiation (Greer, 2007, p. 111). The fairly short Statute, consisting of only 57 articles and some-odd provisions, established the political principles on which the autonomy was to be based, the powers to be assumed by the Generalitat, the institutions that would articulate them, the financial system to be used and the procedure for reform (Juberías in Ghai & Woodman, 2013, p. 235-236).

Enacted on December 18th, 1979, the Statute starts by recognizing that Catalonia is regaining its institutions of self-government by transforming itself into an Autonomous Community via the present, as outlined in the Spanish Constitution (Organic Law 4/1979,

Preamble and Article 1). Article 3 expands on the implications of this last provision: Catalonia's self-government powers emanate from "the Spanish Constitution, the Statute and the people", in that order (Organic Law 4/1979). Therefore, given that the Statute itself exists only because of the Spanish Constitution, it can be assumed that Catalonia's powers come from the former, a document that was democratically endorsed by the Spanish people, but they are codified via a "regular" law decree. Article 6 of the Statute, although in a political sense, gives the title of "Catalan" to all citizens living within the territorial boundaries of Catalonia, making the autonomy a territorial one rather than it being based on nationality or ascendance (Organic Law 4/1979).

However, the enumeration of exclusive and shared competences within the Statute of Autonomy is perhaps its most noteworthy segment. Amongst the exclusive competences that the Generalitat has at its disposal are matters of education, culture, historical heritage, tourism, public infrastructure, transport, the organization of self-government institutions and the conservation, modification and development of Catalan civil law (Organic Law 4/1979, Article 9, 15). One can distinguish two general categories within what I call 'shared competences', which are matters in which the Generalitat has to take Spanish law or public policy into account one way or another. Regarding matters such as banking, insurance, energy, mining, press and public health, the Generalitat has to follow a 'basic frame' of legislation provided by the Spanish state (Organic Law 4/1979, Article 10, 16 and 17). This 'basic frame' is comparable to the hierarchy established in federalist states in the sense that the constituting entities can only build upwards from the laws enacted by the central state. On the other hand, the Generalitat has "exclusive competence" over economic, industrial agricultural and internal commerce matters, as long as it

is in accordance with the State's monetary policy and its bases and organization of general economic activity (Organic Law 4/1979, Article 12). This is another sort of basic frame that thwarts full authority over said matters. In matters of security, the Generalitat is allowed to create and maintain its own police force and is required to execute State law regarding penitentiary, labor and intellectual property matters (Organic Law 4/1979, Article 11, 13). And on a broader note, Catalan law is subject to review only by the Constitutional Court (Organic Law 4/1979, Article 40).

With respect to the institutions that articulate these competences, the Generalitat is empowered to organize them within the boundaries of the Statute (Organic Law 4/1979, Article 9). This includes the creation of a Parliament, an Executive Council (or Government) and the position of President, who is chosen by Parliament and appointed by the King (Organic Law 4/1979, Third Title). Pursuant to the Generalitat being able to organize its institutions, it is also responsible for enacting its own budget, and its Treasury is made up of taxes, fines levied by itself, debt-emission, taxes transferred to by the State and a percentage of total State taxes, among others (Organic Law 4/1979, Articles 44, 49, 50 and Additional Provision 6). This makeup is especially important, as self-government powers are only useful if funds are available to carry out action. Furthermore, the provenance of said funding dictates how, when and where action is to be carried out. The Statute also outlines the processes in which the Generalitat can solicit more competences, whether they are directly transferred by the State or having expressly attributed the power to develop further legislation in accordance to certain basic frame of law (Organic Law 4/1979, Article 28). Finally, the Generalitat and the Spanish Legislature share the



right to solicit any reforms to the Statute, and these must be approved by the Catalan Parliament, the Spanish Legislature and the people of Catalonia (Organic Law 4/1979, Title IV).

### **First attempt at reform**

In 2004, the *Institut d'Estudis Autonòmics*, a research center managed by the Generalitat and focused on the territorial organization of the state and the self-government of the region published a report that examined multiple deficiencies of the existing system (Lecours, 2021, p. 52). Essentially, the report pointed out that the decentralization process that had started in 1979 had either stagnated or never materialized at all (Lecours, 2021, p. 53). To address this, they recommended change in the form of a reform of Catalonia's autonomic arrangement (Institut d'Estudis Autonòmics, 2004, in Lecours, 2021, p. 52).

Coincidentally, the governing parties in both Catalonia and Spain favored the quest for reform (Adams & Rocher, 2014, p. 51). The aim of the reform was a maximum expansion of Catalonia's self-government capabilities, while also resolving some deficiencies in the system itself (Adams & Rocher, 2014, p. 51). "The negotiations were difficult...In the end, an agreement on a reform to the Statute of Autonomy was reached, and it was supported by both the Catalan and Spanish Parliaments." (Lecours, 2021, p. 53) The only parties that ended up opposing final draft and campaigning for the Catalan people to reject the text in the elections were the *Partido Popular* (PP) and *Esquerra Republicana de Catalunya* (ERC), for completely different reasons: PP denounced the statute since it left the Catalan Parliament due to considering it an "undercover reform of the Constitution", while ERC felt the Catalan proposal was cut back too far in the Spanish Parliament (Adams & Rocher, 2014, p. 52).

Approved by 73% of voters, the new Statute expanded the powers of the Catalan government while also emphasizing their distinctive character within Spain by stating textually that Catalonia is a nation and that Catalan self-government derives from its historical rights (Colino, 2009, in Lecours, 2021, p. 54).

According to Benedikter (2009) the improvements of the new Statute were plentiful:

These innovations include the establishment of new competences and the controversial introduction of legal techniques to define precisely and to protect Catalan competences from erosion and centralisation by the state legislative and executive; new finance regulations, new instruments for cooperation with the state and for participation in state organs and in state decision processes that deal with European matters or affect Catalan interests, the regulation of the official status of the Catalan language and of the language rights and duties of Catalan citizens, and, last but not least, symbolic aspects concerning the identity of Catalonia as a sub-state nation. (p. 84)

However, the PP, the Spanish Ombudsman, and five Autonomous Communities presented the Catalan Statute before the Spanish Constitutional Court, alleging violations to their Magna Carta (Lecours, 2021, p. 54). In 2010, the Constitutional Court struck down 14 of the most conflicting provisions (related to topics like language, human rights, the judicial branch and the financial sector) and made a “constitutionally compatible interpretation” of 27 others (Adams & Rocher, 2014, p. 53-55). The statement that became the focus of the decision and immediately sparked a series of protests in the region was that of Catalonia being a nation only in a sociological sense, not so in a legal-constitutional sense (Adams & Rocher, 2014, p. 54, 57). The annulment of these

clauses was also interpreted by nationalist parties in Catalonia to mean that remaining within Spain would be detrimental to the national interests of Catalans (Lecours, 2021, p. 56).

### **The aftermath of the Constitutional Court's ruling**

In the subsequent elections to the Catalan Parliament, nationalist and center-right coalition *Convergència i Unió* (CiU) won the majority of the seats with a campaign aimed at pursuing an agreement with Spain that would ameliorate the fiscal imbalances between the two parties (López-Bofill, 2014, p. 72). Data at the time suggested the fiscal imbalance of Catalonia vis a vis the rest of Spain as a percent of the GDP was between eight and ten percent, while other regions such as the Basque Country held their imbalance at around two percent (Costa i Font, 2010, p. 15-16). The proposal would undoubtedly require the agreement of the Spanish government, as it would amend the statute that governs the financing of Autonomous Communities to make Catalonia's situation equivalent to that of Navarra and the Basque Country, two regions that collect and manage most of their taxes (López-Bofill, 2014, p. 73).

This accommodation would not only stimulate a stagnant Catalan economy, but CiU also considered it a first step towards overcoming the crisis provoked by the Constitutional Court a few months back (López-Bofill, 2014, p. 73). Therefore, CiU leader Artur Mas had the task of negotiating with recently elected prime minister Mariano Rajoy, member of the same party that lodged the unconstitutionality appeal of the Catalan Statute of Autonomy of 2006 before the Constitutional Court (PP). Catalonia's fiscal situation was so dire, that a month before the summit the Generalitat was forced to ask Madrid for a bailout of around €5 billion.

Unsurprisingly, Rajoy stood his ground in making sure no special fiscal status for Catalonia was granted, but he did agree to the bailout (El País, 2012).

Ever since, Catalan governments have tried to hold referendums to determine the future of the region. Most notably, in 2017, the political parties of the coalition *Junts pel Sí* held a referendum despite threats from the Spanish government; 92% of voters favored independence in a consultation marked by the abstention of those opposed to secession (Lecours y Dupré, 2020, p. 19). The Spanish Government's response to this illegal referendum was to invoke Article 155 of the Spanish Constitution and disband the Catalan Parliament (Lecours y Dupré, 2020, p. 19).



## **V: Autonomy of Puerto Rico**

The past ten years of Puerto Rico's history as a nation have been one of the most tumultuous periods ever. The island has suffered from just about everything, from defaulting on debt to getting a democratically-elected Governor to resign after weeks of scandals and protests. Natural disasters like Hurricanes María and Irma in 2017 and several earthquakes in early 2020, followed by the global COVID-19 pandemic have also reaped havoc over the 3.2 million Puerto Ricans that currently live on the island. All of these and many more occurrences have placed Puerto Rico on a global spotlight, although fugaciously, and have raised questions about the island's relationship with the United States: "Is Puerto Rico part of the US?", "Are Puerto Ricans American citizens?", "Does Puerto Rico want to become a State?", "Is Puerto Rico a country?". This chapter will therefore attempt to delve into Puerto Rico's relationship with the United States in an effort to understand and analyze its nature, relevant history and current status, taking into account the most noteworthy developments.

### **ELA: Postwar self-government**

Following the culmination of World War II, the newly established United Nations' (UN) Charter proclaimed the purpose of developing "friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples" (UN Charter art. 1, para. 2.). Article 73 of said charter further enshrined the notion of self-determination by establishing that all members of the UN that assumed the responsibility of territories yet to hold self-government should, among other obligations, assist them in the development of free political institutions (UN Charter art. 73). Among the list of non-self governing territories administered by the US issued

by the UN in 1945 were territories such as Alaska, Hawaii, the Panama Canal Zone and Puerto Rico.

Three years after granting Puerto Ricans the right to democratically elect their governor, the US Congress passed Public Law 600 “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” (Puerto Rican Federal Relations Act, 1950). For the process to go into effect, Puerto Ricans needed to ratify Public Law 600 via a referendum before calling a Constitutional Convention to draft their new *magna carta* (Puerto Rican Federal Relations Act, 1950). Among other things, the law mandated that the Constitution included a republican form of government and a bill of rights, and that the approved version was to be voted upon by the People of Puerto Rico and then sent to the President for his review and presentation before Congress, where the final word was to be had (Puerto Rican Federal Relations Act, 1950).

In compliance with this provision, Governor Luis Muñoz Marín relayed the final version of the Constitution of Puerto Rico to President Harry S. Truman on March 12th, 1952 for him to approve and send it to Congress for its ratification (Trias Monge, 1982, p. 270-271). In his letter to President Truman, Muñoz Marín underscored what he had been saying to his fellow Puerto Ricans during the entire ratification process: that this constitution erased every trace of colonialism because it was based on a compact and mutual consent (Trias Monge, 1982, p. 271). However, Muñoz Marín had declared earlier before Congress that “...if the people of Puerto Rico should go crazy, Congress can always get around and legislate again.” (Muñoz Marín, 1950, as cited in Torruella, 2018, p. 79).

Congress did not hesitate to use the powers it had reserved for itself in Public Law 600, whereas they approved the Constitution on July 1<sup>st</sup>, 1952, but not before unilaterally repealing certain dispositions and mandating the amendment of others via local referendum (Cox Alomar, 2022, p. 67). Perhaps the most important section was the one unilaterally repealed: Section 20 of the Bill of Rights (Article 2). This section was perhaps one of the most avant-garde in modern constitutions throughout, as it recognized the people's right to primary and secondary education, a job, a defined adequate standard of living and the right to assistance in the event of unemployment, affliction, old age and motherhood, among others (Const. of Puerto Rico, Article 2, Section 20). In the postwar world, these social welfare protections were more than likely seen as a threat to capitalism and individual liberties, and so they were discarded. Furthermore, Congress saw fit to prohibit certain constitutional amendments, like one to add what they had just redacted (Const. of Puerto Rico, Article 8, Section 3). On July 25, 1952, Muñoz Marín proclaimed the amended Constitution for the *Estado Libre Asociado de Puerto Rico* (ELA), literally meaning Free Associated State of Puerto Rico and carefully stylized in English as 'Commonwealth of Puerto Rico'.

### **The UN disaster and its backwash**

After ELA's proclamation, Muñoz Marín commenced the process to excluding Puerto Rico from the list of non-self-governing territories by sending another letter to President Truman, this time asking to cease the transmission of information to the UN under the aforementioned Article 73 of the organization's Charter (Trías Monge, 1997, p. 121). The process itself, developed only a few months after the proclamation of the constitution, reflected the first

discrepancies between the two governments in regards to the real meaning of the “compact”. While Puerto Rico’s position was one anchored on the erasure of all “taint of colonialism” and that the self-government arrangement could not change was it not by mutual consent, the US limited itself to notifying the UN of the cessation of information transmittal while glossing over the internal discrepancies and carefully refraining from endorsing the insular interpretation (Trías Monge, 1997, p. 121-122). The latter really concerned the government of Puerto Rico, to the point of evaluating a request to the US to withdraw the claim that the island was now self-governing, but they ultimately desisted from it (Trías Monge, 1997, p. 122). In the end, however, the US delegation ceded to Puerto Rico’s definition of the compact, declaring it “stronger than a treaty” insofar as it needed the consent of both parties to be altered, and the removal of the island from the list of non-self-governing territories narrowly passed (Trías Monge, 1997, p. 122-124).

The process at the UN generated widespread concern within Puerto Rican politics, which translated into the first attempt at revising and formally broadening ELA’s powers, in an effort to underscore the spirit of the compact. After all, the Federal Relations Act of 1950 remained untouched and there was little evidence that Congress would go along with the interpretation of the arrangement that was presented at the UN (Trías Monge, 1997, p. 124). In 1959, the Fernós-Murray bill was presented before Congress to the effects of substituting the Federal Relations Act with the “Articles of Permanent Association of the People of Puerto Rico with the United States” (Trías Monge, 1983, p. 130). The act, which affirmed the compact between the two nations as opposed to an agreement “in the nature of a compact”, provided a procedure for the delegation of federal competences to the government of Puerto Rico, guidelines towards the applicability of federal legislation in Puerto Rico in a quasi-state manner, the direct subjugation



of Puerto Rico's Supreme Court to that of the US instead of having appeals go through the First Circuit of Appeals, and a provision that stated that any and all changes to the Articles was subject to the approval of the qualified voters of the island, among other elements (Trías Monge, 1983, p. 130-149). There was great hostility towards the bill from the start, and hearings in the Senate mostly focused on the meaning of the compact established in 1952 (Trías Monge, 1997, p. 126-127). By 1960, the considerable unease from San Juan towards both the possibilities of approval that the bill had and the extent of amends needed in order for it to pass led Muñoz Marín to ask the Congresspeople that the bill be abandoned completely and privately started advocating for other ways to tackle the issue (Trías Monge, 1983, p. 169).

Thus, in emanating from a concern that the Federal Relations Act did not capture everything Puerto Ricans thought true, the first formal attempt at reforming ELA showed three things. First, due to the fact that the agreement was contained in an act of Congress, the process to alter Puerto Rico's self-government powers or simply confirm its character as equal to the US looked to be ultimately and exclusively up to that legislative body. Second, there was a gap between what what Puerto Rico understood the relationship to be, and what the US thought. Thirdly, the environment for dialogue and change proved not to be welcoming.

### **A second attempt at reform**

Three years later, Congressman Wayne N. Aspinall of Colorado introduced a bill to create a commission composed of members appointed by both governments, tasked to produce a compact between the two nations that recognized and reasserted the sovereignty of the people of Puerto Rico, among other broad provisions pursuant to the bilaterality of the relationship (Trías

Monge, 1997, p. 128-129). The bill was ravaged at the hearings and it instead produced a commission to study the status of the island and formulate the recommendations it deemed advisable (Trías Monge, 1997, p. 129). Upon completion, the Commission recommended a plebiscite be held between three status formulas: a Commonwealth status stripped of its colonial connotations, statehood and independence (Trías Monge, 1997, p. 130). The plebiscite, held in 1967, had over 700,000 votes and yielded 60.4% of them towards the new Commonwealth, 39% of them towards statehood and 0.6% of them towards independence (Comisión Estatal de Elecciones). The result showed that Puerto Ricans widely supported ELA, and that its shortcomings were *vox populi*. However, even after organizing the commission itself, Congress did not pay any attention to the results of the plebiscite, as it was never legally bound to do so (Trías Monge, 1997, p. 129-130). Another attempt at reform had perished in the hands of the US Congress, but this time they had also turned their backs on a clear mandate from the people of Puerto Rico.

### **The Ad-Hoc Committee and Gerald Ford's creativity**

In 1972, and after much pushback and documented disavowals from the White House and politicians on the island, new Governor Rafael Hernández Colón, a member of Muñoz Marín's political party (*Partido Popular Democrático*, PPD) achieved the creation of a 14-person Ad Hoc Committee to act on the results of the last plebiscite (Trías Monge, 1994, p. 382). Yet another attempt at reform showing that the power to change the relationship was one-sided. The first draft of the revised compact that the Committee produced encountered far greater difficulties than before, so they had the Puerto Rican delegation draft a second compact and distribute it to

several federal government agencies (Trías Monge, 1997, p. 131). While the feedback from the agencies regarding the second draft was mixed, the real reluctance came from the White House, where the proposed compact was internally catalogued as embarrassing to the President, Congress and the American People insofar as Puerto Rico was to be given powers equal or superior to those of a state (Trías Monge, 1997, p. 131-132).

Three years after its creation, the Committee transmitted the final report to the President including the draft of the “Pact of Permanent Union between Puerto Rico and the United States” as well as individual and adverse opinions from the majority of the members as to what was being proposed: evidently, no one within the Committee was satisfied with the final product (Trías Monge, 1994, p. 439). Given that the worry within the White House was that the new compact gave Puerto Rico most of the advantages of statehood but few of the responsibilities and the fact that the *Partido Nuevo Progresista* (PNP), the sole statehood party in Puerto Rico at the time had just won the gubernatorial elections, outgoing President Ford announced that the appropriate status for Puerto Rico was statehood and proposed that Congress and the island began working on the matter (Trías Monge, 1994, p. 448-449). Again, although a bill was presented in the House to these effects, nothing substantial came to occur as even insular pro-statehood politicians were weary about supporting a statehood bid without the direct mandate of the people via a plebiscite (Trías Monge, 1994, 1997). This time, the sourness of the pact produced by the Commission, mixed with the US’ unwillingness to change the arrangement and Gerald Ford’s political creativity created another dead-end for Puerto Rican self-determination. In short, 60.4% of Puerto Rican voters were outright ignored in their call for a non-colonial ELA,

and there was nothing they could do about it, for it was now evidently clear that change could only happen if Congress wanted.

### **SCOTUS is back, and its the PNP's turn at bat**

In the coming years, SCOTUS returned to the landscape of Puerto Rico's conundrum after over fifty years of silence with their decisions of *Califano v. Torres* (1978) and *Harris v. Rosario* (1980), thereafter followed by plebiscites organized by the pro-statehood party. Although the two aforementioned cases versed about the availability of federal assistance programs for US citizens in Puerto Rico, they both confirmed that the US Constitution does not require Congress to treat a territory in the same way as a state, therefore deepening the confusion about the legal nature of ELA (Cox Alomar, 2022, p. 72). The next plebiscite was celebrated by PNP governor Pedro Rosselló in 1993, after convincingly winning the general elections and in order to fulfill his campaign promise (Trías Monge, 1997, p. 134). This time, 73.5% of registered voters casted ballots with 48.6% of them going towards the current Commonwealth and its development, 46.3% for statehood and a mere 4.4% for independence (Comisión Estatal de Elecciones). ELA and its development had won again, but statehood was inching closer to victory.

In 1998, another plebiscite was celebrated for the electors to choose one of four petitions to be made to the US Congress, or none of them: 1). to keep ELA as an entity subject to the Territorial Clause of the US Constitution, 2). to work for a formula of free association between the United States and Puerto Rico, in which the island's sovereignty was recognized and enabled it to negotiate all the aspects of the relationship including citizenship, common market and

common defense, 3). to grant Puerto Rico statehood, 4). to grant Puerto Rico independence or 5). none of above (Comisión Estatal de Elecciones). ELA's depiction in a certified ballot as an entity subject to Congress' plenary powers, while executed under a PNP government, was nothing else than a product of various unsuccessful attempts at reform, combined with SCOTUS' pronouncements. After all those years, it was becoming clear that ELA was not the best of both worlds. However, out of 71.6% of registered voters, 50.3% of them chose the 5th option, 46.5% chose the 3rd option and 2.5% chose the 4th option (Comisión Estatal de Elecciones). Indeed, Puerto Rico preferred to ask Congress for nothing before asking for statehood, free-association, independence or even admitting that ELA was subject to the Territorial Clause.

### **Insolvency, SCOTUS, Congress and a few more plebiscites**

With the new millennium looming in, three more plebiscites took place while matters on the island took a turn for the worse with a dire fiscal situation, a condemnatory pronouncement from SCOTUS and a bill from Congress. The plebiscite that took place in 2012 was presented as a two parter: the first part was a yes or no question on whether voters agreed to maintain the "present form of territorial status", the second part was the choice of one of three non-territorial arrangements (statehood, independence and free-association) and the choice was to be made irregardless of the answer on the first part (Comisión Estatal de Elecciones). PPD's leadership at the time urged their coreligionists to vote "yes" on the first part and leave the second part blank, in protest to what they defined as a "rigged and undemocratic process" from the current PNP government (*García Padilla exhorta a dejar la segunda pregunta en blanco*, 2012). Presented on the same day as the general election, the plebiscite had a participation of 78.2% of registered

voters and resulted in 53.97% of votes for “no” on the first question and 61.16% of votes for statehood on the second one, alongside 33.34% for a “sovereign” ELA and 5.49% for independence (Comisión Estatal de Elecciones, 2012). For the first time ever, Puerto Ricans expressed a clear discontent with the current arrangement and, although arguably less clearly, named statehood as their preferred form of status. Notwithstanding this historic achievement, Congress did not take any direct action. Coincidentally or not, it did appropriate \$2.5M for “objective, nonpartisan voter education about, and a plebiscite on, options that would resolve Puerto Rico’s future political status” two years after the plebiscite (Consolidated Appropriations Act, 2014).

Four years later, SCOTUS and Congress openly thrashed the notion of the bilateral compact when the former emitted its decisions on *Puerto Rico v. Sánchez Valle* and *Puerto Rico v. Franklin California Tax-Free Trust*, and the latter approved the PROMESA Act. As it was the case with *Califano* and *Harris*, the facts in question on both cases were not directly related to the status of Puerto Rico, but its implications obligated a thorough analysis of the place the island occupied within the framework of the US government. In *Sánchez Valle*, the Court applied the dual-sovereignty test to Puerto Rico in order to judge whether the Double Jeopardy Clause was applicable, and held that the ultimate source of sovereignty of the island was the US Congress (*Puerto Rico v. Sánchez Valle*, 2016). The decision in *Franklin* was more lurid, as it cited the Insular Cases doctrine to rule that Puerto Rico cannot benefit from Chapter 9 of the US Bankruptcy Code because it is not a part of the country, and that Congress had to enact a special insolvency regime for the island (Cox Alomar, 2022, p. 76).

The insolvency regime came in the form of the PROMESA, a bill enacted for Puerto Rico by the US Congress after almost ten years of consecutive negative economic growth, an unprecedented debt crisis, diminishing prospects for attracting job-creating foreign investment, declining revenue streams and the downgrade of the island's government bonds (Cabán, 2018, p. 176). The law established a seven-member Oversight Board to provide a method for Puerto Rico to achieve fiscal responsibility and access to the capital markets, and has supremacy over any general or specific provisions of territorial law or regulation that is inconsistent with any of provisions (PROMESA, 2016). A Congressional Budget Office (2016) Cost Estimate report highlighted the Board's broad sovereign powers to effectively overrule decisions by Puerto Rico's legislature, governor, and other public authorities, and that the island's government would be in charge of all related expenditures. Apart from it being able to influence nearly any area of policymaking in Puerto Rico, the Board is not subject to any form of Puerto Rican control or oversight (Harvard Law Review, 2017).

As Congress, the Oversight Board is not shy of using its powers over the island's government. The most recent example of their incursion into Puerto Rican affairs is the annulment of Law 41-2022 via the US District Court for the District of Puerto Rico for it being in violation of PROMESA and the Fiscal Plan that the Oversight Board has put in place (*In re: The Financial Oversight and Management Board for Puerto Rico*, 2023). Law 41, better known as the *Reforma Laboral* (Labor Reform, in English) sought to restore and broaden applicable labor rights to workers in the private sector (Microjuris Al Día, 2023). It is therefore evident that, in enacting a bill whose acronym in English means 'promise' in Spanish, Congress singlehandedly lifted the veil over the sexagenarian ELA and showed its true nature: for it being

proclaimed “in the nature of a compact” did not mean that it was an agreement between two equal parties.

The two other plebiscites that have taken place since then have also favored statehood, albeit with mixed messages. To take advantage of the appropriation granted in 2014, the Government of Puerto Rico announced the “Plebiscite for the Immediate Decolonization of Puerto Rico” was to take place on June 11, 2017. The House Report accompanying the Consolidated Appropriations Act of 2014 indicated that the US Department of Justice was to review the plebiscite materials and notify Congress if they were compatible with the Constitution, laws and policies of the US for the funds to be obligated (US Department of Justice, 2014). Two months before the plebiscite was to take place, the Office of the Deputy Attorney General turned the election in its head with a letter to Governor Rosselló Nevares, son of Pedro Rosselló and a member of the PNP himself. In the letter, the DOJ stated that the exclusion of “the current territorial status” pursuant to the results of the plebiscite in 2012 was unjustified, since the validity of its results was “subject to controversy” and that if the goal of the consult was to “resolve Puerto Rico’s future political status”, the current status must be an option (US Department of Justice, 2014). Furthermore, the DOJ declared the ballot’s language to be ambiguous and potentially misleading (US Department of Justice, 2014).

Although the final ballot was amended, the letter took away all credibility the plebiscite held in the first place, and this fact echoed in the results: statehood won with a 97% margin, but the real headline was the scarce participation of 23.23% of registered voters (Comisión Estatal de Elecciones, 2017). In the end, even though abstention is not accounted in the results of any



election, it managed to skew the results of this plebiscite in its favor. The most recent plebiscite, coupled with the general elections of 2020, did not suffer from the same problem as the last one. A comparatively low participation rate of 54.72% of able voters showed up to cast their ballots on November 3rd of that year: 52.52% of them said “Yes” to statehood and the rest voted “No” (Comisión Estatal de Elecciones, 2020). Albeit a clearer message that Puerto Rico is now pro-statehood, the results did not make Congress flinch.

The recurrent theme in Puerto Rico’s recent history is that there is an ever-widening dissatisfaction with the territorial status-quo, coupled with decades of neglect from Congress. Less than five years were enough for the framers of the Puerto Rican Constitution to realize that what they hoped to be an agreement between two equal parties was nothing more than an act from Congress, mollified by the appearance of bilaterality. As SCOTUS very well said in *Sánchez Valle* (2016), “[t]he island’s Constitution, significant though it is, does not break the chain” (p. 76). In an effort to right that wrong, and underscore their understanding of the pact, various attempts to reform ELA were attempted. While the US Government as a whole did not technically ignore the wishes of the people of Puerto Rico to broaden their autonomy and emphasize their sovereignty, it staved off each request with lukewarm gestures and more recently clear pronouncements. Thus, the various attempts at reform can be summarized in Puerto Rico expressing its desire to change and the US doing its best to do nothing without blatantly ignoring every pronouncement. As of this moment, the now apparently majoritarian cries for statehood are suffering from the same disregard. The same cannot be said for independence, for it has not reached considerable results in any plebiscite or election since ELA’s establishment. The fact of

the matter is that in 1952, Congress delegated internal governance to the people of Puerto Rico, but reserved every right to alter it unilaterally; and in 2016, it did just that.



## VI: Theory Testing

As mentioned previously, *Québécois* professor André Lecours is the proponent of a novel theory within comparative politics. As is the case with the best theories, it can be summarized in just once sentence: “[s]tatic autonomy stimulates secessionism while dynamic autonomy staves it off” (Lecours, 2021, p. 189). Of course, there are a few caveats to this idea but, in general, it is argued that the more stagnant and change-adverse an autonomy arrangement is, the more it fosters secessionist tendencies in subnational movements, and viceversa. Per Lecours, this is the case for a wide variety of substate *demos*, including Catalonia, Scotland, South Tyrol and Flanders. He goes on to identify Quebec, Puerto Rico and the Basque Country as outliers that ultimately enrich his theory, as he broadens the scope of the statement. This section intends to explore and analyze this theory in regards to Catalonia and Puerto Rico, separately, to identify if and to what extent it can actually explain the situations unfolding in both regions.

### **Autonomy in Catalonia according to Lecours’ theory**

As a nation with autonomy within Spain, Catalonia’s case is a perfect example of how Lecours’ theory works. The review of historical developments that lead to the people of Catalonia being somewhat recognized as a distinct *demos* within the Spanish state and all its aftermath has been done elsewhere, so the discourse here is only focused on analyzing the case in light of the theory at hand. The caveat in Catalonia’s autonomy is the fact that it is the same basic structure that the rest of regions hold: an autonomous community ruled by a statute of autonomy. Therefore, in Spain being neither a federation or a unitary state but more a chimera called “State of Autonomies”, Catalonia’s recognition as autonomous is not nation-based, but

region-based. Indeed, the country's constitution equates "nationalities" with "regions" in mentioning them as parts of the "Spanish" Nation, and the current Statute of Autonomy for Catalonia emphasizes both its historical rights to accede to self-government and its status as a nation. The latter statement is the epicenter of controversy in modern Catalan politics and is the main example of the static qualities of the autonomy conferred. Moreover, modern secessionism is a relatively new idea in Catalan politics when compared to autonomism, and it had not really been a dominant force until recently.

The fact of the matter is that Catalonia's autonomy might have been static by design. As established in 1978, the Constitution of Spain recognizes the right that the aforementioned nationalities and regions have to autonomy, it is careful in enumerating competencies for both state and region, and it cedes competences not outlined thereof to the autonomous communities and their Statutes. Each Statute was to be elaborated by an assembly organized by the region and then transmitted to the central state's legislature, for its due process as a regular law. Apart from this procedure as a regular law, the process for amending a statute was to be contained in itself. In Catalonia's case, the residents of the region have the final say on whether an amended statute goes into effect. Then again, there is always the Constitutional Court.

After the *Institut d'Estudis Autònoms* report in 2004, the government of Catalonia saw fit to address the shortcomings of the current statute and maximize the powers of the region within the boundaries of the State of Autonomies: the circumstances mandated it and the political climate allowed it. Therefore, an agreement was reached between both parliaments for a new statute, to be endorsed by the people of Catalonia and put into effect in 2006. Apart from broad

reform aimed at establishing new competences and a framework to protect all Catalan self-government from central state meddling, the new statute also focused on symbolic measures like reaffirming Catalonia's status as a nation and the primacy of its language. As outlined before, centre-right party PP, the Spanish Ombudsman and various autonomous communities presented Catalonia's new statute before the Constitutional Court for alleged constitutional violations.

In 2010, the court rendered the new Statute practically useless. The process initiated after Franco's passing to transform Spain into a State of Autonomies in which whole regions could govern a broad variety of internal aspects and where nationalities could have their differences recognized was completely halted. Evidently, Catalonia's reality had changed since their first statute, but the Constitutional Court found fit to overthrow a bilateral effort to recognize this change by way of enhancing what was already established. This gave the overall sense in Catalonia that growth and change within the State of Autonomies, as agreed upon in 1979, was not a real possibility. The Court's comments about the declaration of Catalonia as a nation within Spain being devoid of any legal value and nothing more than a statement in a sociological sense are enough evidence to conclude that the State of Autonomies was designed to belittle nations like Catalonia into being a part of the Castilian nation. Any growth, evolution or outright change within the nature of their autonomy was, and is completely forbidden, as is the equation of any nation to the "Spanish" nation.

After all, the recognition as a distinct society never carried any special value. While it is true that national symbols like language and flag are allowed, regions like La Rioja, Cantabria or Murcia also have their Statute of Autonomies with flags and self-government powers, and they

are not constituted by substate *demoi*. Moreover, the Catalan nation arguably stretches to the Valencian Community, Balearic Islands and parts of Aragon, but it was constrained to the Autonomous Community it is today. If the literature on autonomy suggests that these types of arrangements are mostly established in order to protect differences, then the nature of the autonomy conferred to Catalonia was static from the beginning insofar as it did not allow any substantial flexibility related to their reality as a distinct society within Spain (Ghai, 2011). Simply put, recognition of Catalonia (and other nations within Spain) as “nationalities” constituted a downgrade designed for them to fit inside the “Spanish nation” and no room for growth in this respect was outlined.

There is no question that the nature of this autonomy is what has triggered a rise in the secessionist tendencies of Catalonia’s nationalist movement. As previously stated, the independence movement in this region has not been majoritarian. In his book, André Lecours presents a historical account of the aptly named “autonomist tradition” of Catalan nationalism. Indeed, “[a]utonomy was always the dominant objective of nationalism in Catalonia” (Lecours, 2021, p. 45). Although missing a mention a key figure like Josep Tarradellas, his recount serves the purpose of correctly arguing that the majoritarian current within modern Catalan nationalism has always been autonomist, mainly due to its nineteenth century bourgeoisie origins also outlined herein. Neither dictatorships nor political exile changed the fact that the ultimate goal was to achieve the upmost level of autonomy and recognition possible, within a close relationship with Spain.

The events that did manage to nudge Catalan politics towards secessionism were the Constitutional Court's decision in 2010, coupled with the fiscal crisis and Madrid's refusal to grant the region a new fiscal arrangement. During this time, various public demonstrations surged throughout Catalonia and hinted at the idea of the Catalans' right to decide (Lecours, 2021, p. 59). At the same time, political coalition *Convergència i Unió* (CiU) was still in power, but their autonomist stance was under pressure as political parties like ERC and cultural organizations like *Òmnium Cultural* were returning and shifting towards independence, respectfully (Lecours, 2021, p. 59-60). In 2012, CiU leader Artur Mas declared that the elections in November of that year would be fought on the future of the Catalan nation, formalizing the coalition's shift towards independence (Lecours, 2021, p. 60).

After the Catalan elections in 2012, CiU and ERC formed a coalition to establish a secessionist government that would produce a Declaration of Sovereignty, an advisory council that proposed steps towards a national transition and a plebiscite (Lecours, 2021, p. 61-63). In 2015, CiU split and new secessionist government formed by *Junts pel Sí* and *Candidatura d'Unitat Popular* (CUP) organized the plebiscite in 2017 that ended in the constitutional disbandment of the Catalan Parliament (Lecours, 2021, p. 63-66). After this, secessionist parties have continued to have the majority of seats in the parliament, but Lecours (2021) seems to argue that the self-determination process in Catalonia has fueled the rise of centralist parties like *Ciudadanos* and *Vox*, producing a complex configuration of Spanish politics in which nationalist parties have proved important to form a central government (p. 67).

There is no contention in this regard: Catalonia's shift from autonomist to secessionist is rooted in the Constitutional Court's decision in 2010 and its aftermath and portrayed by the parties that make up its government. An arrangement seemingly designed to recognize differences within Spain ended up creating a hierarchy in which no nation could evolve and acquire the same status as the Castilian. However, it would be amiss not to note that the strong repression from the Spanish state seems to have frustrated and tired the Catalan people, as secessionist governments are still in power but no large-scale efforts are being undertaken. Then again, ERC's key role in the making of Spain's current government may lead to substantial negotiations along the lines of what the party's current president Oriol Junqueras (2021) referred to as the "Scottish way", a bilateral approach to solve the conundrum inspired by the way Scots and English have handled their relationship.

### **Autonomy in Puerto Rico according to Lecours' theory**

Puerto Rico is the perfect model for a static autonomy, but it is not the perfect fit for Lecours' theory. Indeed, where secessionism should be a significant national movement in response to said immovability, there is only a minimal mobilization in this regard. This is even more striking when taking into account the fact that the nature of the island's relationship with the US has permitted a unilateral retrenchment of the self-government powers it had been delegated. So why then is secessionism not strong in Puerto Rico? Lecours (2021) offers three answers in an attempt to solidify his theory: a context where change seems possible due to the existence of both statehood as a constitutionally possible option and the portrayal of ELA as potentially evolutive, and Puerto Ricans' ability to move to freely to the US and change their



relationship with the country (p. 152). He argues that theory holds because if and when when the realities of the first two answers penetrate Puerto Rican politics, secessionism could see a rise (Lecours, 2021, p. 157).

As outlined before, several different attempts have been undertaken in order to change Puerto Rico's relationship with the US after its formalization in 1952. These efforts were varied in their nature, ranging from Congressional bills to Ad Hoc Committees and countless plebiscites. It is important to note that the variance ends there, as they all ended with the disdain of Congress, among other federal entities. However, the island's fiscal state did manage to catch their attention, and retrenchment was unilaterally ordered with the justification of granting the island protection against its creditors. There is simply no contention with Lecours here: Puerto Rico's autonomy has not evolved in any conceivable way but backwards, making it a textbook definition of the term 'static autonomy'. The nature of ELA does not allow for change, as Congress and the Federal Government in general have demonstrated no inclination towards it.

Lecours' three answers to the Puerto Rican dilemma are plausible. Since its inception, ELA has been presented as an autonomy arrangement capable of evolving to meet the needs of Puerto Ricans, because of its bilateral nature. After all, it was lauded by some as "perhaps the most notable of American governmental experiments in our lifetime" and others thought of it as a "new dimension in Federal government" (Heine & García Passalacqua, 1983, p. 21). More so, merely two years after its ratification, Muñoz Marín was already mentioning that ELA was not perfect, and that time and careful study would yield the means to that long-awaited perfection (Wells, 1969, as cited in Lecours, 2021, p. 154). This study has gone even further than Lecours to

highlight the attempts to make ELA whole: the Fernós-Murray bill of 1959 to touch-up the Federal Relations Act, the Aspinall bill in 1963, which yielded the first plebiscite where the electorate expressed that ELA needed change, the Ad Hoc Committee of 1972 as a delayed response, and the countless plebiscites since then. All of these attempts have depicted ELA as a structure in need of change and as a structure capable of changing.

Statehood, on the other hand, has also been presented as a constitutionally possible alternative to ELA's static qualities. Along with a notion of enhanced ELA and independence, the presentation has formally taken place in the myriad of plebiscites celebrated since 1967. These demonstrations are undoubtedly characteristic of Puerto Rico's status debate, and Lecours (2021) convincingly argues that they have created a context in which change is possible, be it one way or another (p. 153). Although inconsequential in bringing upon any substantive action, the results of recent plebiscites prove that annexation to the US is the other part of the dichotomy that reigns the debate in Puerto Rico, and it seems to currently hold the numerical advantage. However, the fact is that the US, both via Congress and the Executive Branch, has been as adamant in ignoring all majoritarian expressions and doing nothing instead.

Therefore, Lecours presents exodus as a third answer. As US citizens, Puerto Ricans have every right to move freely to the mainland and enjoy all the benefits of being a citizen, like representation in Congress and a vote for the presidency. Certainly, migration of Puerto Ricans to the US has been a part of the island's history, especially when sponsored by the the island's government during ELA's embryonic and early developing periods (Lecours, 2021, 158-159).

Another noteworthy period of migration has unfolded recently, as a response to the island's economic crisis and the onslaught of natural disasters (Lecours, 2021, 159).

### **Breaking down Lecours' three answers for Puerto Rico**

From a general perspective, it must be acknowledged that Lecours' primary line of reasoning in regards to Puerto Rico seems well thought out. As outlined previously, it is true that ELA has been portrayed as an autonomy arrangement that allows for change, that statehood is a constitutionally possible option and that both these avenues have been formally presented in plebiscites that can legitimize a perception that the island's status is dynamic. In case these two are not enough, US citizenship provides Puerto Ricans with an avenue of escape towards the mainland. Despite this, further scrutiny reveals that Lecours' attempt at making the static-dynamic autonomy theory work for Puerto Rico falls short of reality. After all, how can a theory based on the relationship between static autonomy in a region and the tendency towards secessionism not apply to ELA, a blatantly static entity? Moreover, there is evidence of a significant disconnect between said theory and others within its own genus, suggesting that a more plausible answer to Puerto Rico's conundrum may be found elsewhere.

First, the myth of the diaspora as a reason for secessionism being on the back foot must be debunked. Puerto Ricans have held US citizenship since the establishment of the Jones Act of 1917. In this sense, although the island is not a part of the US, people born in Puerto Rico can move to the mainland whenever they wish and enjoy the full benefits of their citizenship. This is not only a possibility but a reality, as migration of Puerto Ricans to the US is a well documented historical fact that is on the rise again (Cohn et al., 2014; Glassman, 2019; Schachter &

Menchaca, 2021). However, when arguing that this exodus represents an “individual” option of changing the relationship with the US, Lecours (2021) himself recognizes that it is fueled by economic reasons (p. 157-158).

A clearly individual choice to a common problem cannot be included in this analysis. The right to self-determination, whether spearheaded by secessionism or else, is a collective right. Likewise, Puerto Rico’s national consciousness and its struggle against an arrangement that is inamovable, although having individual consequences, is a common issue. Moreover, arguing that there is an individual solution to a common problem is equal to negating the existence of a substate *demos* in the island. Like Puerto Rico, Catalonia’s struggle to find a more adequate form of autonomy within Spain was at least in some ways economically instigated. Patent evidence of this can be found in the Generalitat’s efforts of 2012 to obtain a fiscal agreement like that of the Basque Country in order to level matters between them and Madrid. In the end, Catalonia was not able to achieve a beneficial pact to improve its fiscal situation. It is a fact that Catalonia’s citizens are Spanish (and European) citizens, so what stopped them from moving to the Basque Country and solving their issues with Spain, or eastward towards Italy and relinquish the struggle altogether? Of course, the struggle was, is and always will be inherently related to a national consciousness; the two cannot be separated, so the answer to the common problem did not lie elsewhere. Granted, thousands of Puerto Ricans leave the island in the search of better economical prospects, but this does not make matters different back home: the problem still exists insofar as it is a collective one.

Similar to moving elsewhere, arguing that the presentation of ELA as a change-permitting structure is staving off secessionism is a conclusion derived of incomplete analysis. As one of the main parties in Puerto Rico, PPD has always been the sole supporter of ELA. It was through this party that Luis Muñoz Marín articulated the autonomy arrangement for the island, and figures like Rafael Hernández Colón tried to finish the job. As has been described in Chapter IV and earlier in this chapter, Muñoz Marín and PPD admitted from very early on that ELA was not a perfect autonomy arrangement, but that it was possible to tweak it in favor of reaching the ultimate vision of what was thought by them as a bilateral compact. Efforts to enhance Puerto Rico's relationship with the US started less than ten years after the first agreement was in place, and they more or less have always consisted of various elements. First, there is always an endorsement of the people by means of a plebiscite, legitimizing the political mobilization. Then, the demands include the affirmation of Puerto Rico's sovereignty in permanent association with the US, along with broader powers and more responsibilities for the island. Thus, this was and still is PPD's main political stance.

The fact here is that 'enhanced ELA' is nothing more than continuation of the autonomy project. Whether it is constitutionally possible or not is still up for debate to this day, and it does not necessarily have to be the subject of analysis. What is most important is that this "portrayal" that things can change is arguably no different than other autonomy projects throughout the world. When taking Catalonia as an example, it can be seen that their Statute of Autonomy was also portrayed as, and more importantly agreed upon the fact that it was subject to tweaking whenever needed. However, as was argued earlier, the true nature of the deal prohibited certain types of evolution from the beginning and, like ELA, evolution needs support of both parties

involved. In short, other nations have the option of enhancing their autonomy arrangements, and when this is not feasible, they turn to secessionism. Granted, the variable of the myriad of plebiscites has historically reinforced a notion that a better arrangement is in fact possible, and it seemed to stave off secessionism, but this is only valid for the period where it gathered large support. Today, Puerto Rico is presenting a different outcome in response to its static autonomy. Autonomy as an option, whether viable or not, cannot be argued as a hinderance for a rise in secessionism when support for it is downhill.

The numerous and seemingly inconsequential plebiscites do serve to track how support for ELA and its development has decayed throughout the years, and how its place has not been taken by independence. In 1967, after the incident at the UN and the failed Fernós-Murray bill, around 60% of voters expressed their support for a new Commonwealth stripped of its colonial attributes. In 1993, support for ELA and its further development shrunk to 48.6% of voters, after *Califano* and *Harris* highlighted the territorial nature of the arrangement. In the plebiscite held in 1998, the development of ELA was not presented as a possible option. Then, 50% of voters chose to ask nothing of Congress before ticking a box that affirmed their intention to keep the current ELA, now openly portrayed as an entity bound to the Territorial Clause and the confines of its own Constitution; or to ask for statehood, independence or free association. From 2012 onwards, things took a turn elsewhere: 53% of voters expressed their discontent with the current “territorial” status and 61% of them chose annexation in the form of a state as an alternative.

In the wake of a numerically majoritarian rejection of the status quo and its further development, Puerto Ricans could have chosen from one of the two *de novo* choices: statehood

or independence. Not only are these options fresh, but they are constitutionally possible and have always appeared alongside the various depictions of ELA. The next plebiscite with a sizable participation rate was in 2020 and, again, 52% of Puerto Rican voters said “Yes” to statehood. Evidently, there has been a drop in support towards ELA and its development. During this whole period, support for independence has oscillated between 0.6% and 5.4%.

If plebiscites fuel the perception of change possibility, they could have very well fostered secessionist tendencies once support for the autonomy project was waning. While the option of an enhanced ELA was at some point in time majoritarian, electoral results demonstrate that Puerto Ricans have ceased to support it, and it is very difficult to argue that people can keep believing in something they no longer favor. Certainly, neither enhanced ELA nor the plebiscites themselves have posed as a true hindrance to the development of secessionist tendencies. On the contrary, independence is constitutionally feasible, so it could have been voted for when presented in plebiscites that created a context where change seemed possible.

However, the decline of support for ELA has numerically translated in support for annexation to the US, an option identified by Lecours as the third cause for the lack of secessionist tendencies in the island. A constitutionally valid alternative, statehood seems to enjoy the support of the majority of voters in Puerto Rico since late 2012. This further reinforces the argument that although the myriad of plebiscites has created an environment where change appears feasible, it has not impeded the growth of secessionism, as federalism was able to gain support in the same context. Indeed, when Puerto Ricans rejected the status quo in 2012, they could have very well expressed themselves in favor of independence. Additionally, it seems

counterintuitive to suggest that static autonomies foster secessionist tendencies in substate national movements and then partly attribute the lack thereof to the rise of an alternative option. This becomes even more evident when considering that, as mentioned earlier, Puerto Rico's autonomy is unequivocally static, if not regressive.

### **A fresh perspective on Puerto Rico's reaction to a static autonomy**

When purely concentrating on explaining why secessionism is not surging in Puerto Rico, sight of the bigger picture is lost. Plausible but ultimately imprecise answers are the result of an incomplete analysis that is more obstinate in finding out why Puerto Rico's secessionism is not growing than focusing on the fact that another option is on the rise. Clearly, the dependent variable needs refocusing. The question to ask is not why secessionism is not growing in Puerto Rico in spite of there being a static autonomy, but rather what alternative is gaining majoritarian support as a result of it, and why? As seen before, support for annexation to the US is surging in the wake of a static and retrenched autonomy, and it seems to be doing so at the expense of support for autonomy. As a part of the general trifurcation of options within politics in substate nations, it is worth taking a look at this growth on its own and attempting to understand it.

The answer to Puerto Rico's conundrum may in fact lie elsewhere in the Genus of Theories. In his book *Visions of Sovereignty*, Lluich (2014) establishes that the concept of national consciousness as a form of collective self-awareness and identification with others is not exclusive to secessionists (p. 94). Although this work was already briefly discussed in Chapter III, the potential of its findings to solve the puzzle of the lack of secessionism/growth of federalism in Puerto Rico merits further analysis. In a non-exhaustive list of the cases covered by



the scope of the book, Lluch (2014) showed that different visions of sovereignty exist within stateless nations (p. 16). As true, not all nationalists prefer their nation to be aligned with a state, as autonomists and annexationists are also part of the spectrum. Hence, disagreements on the level of sovereignty a nation should seek produces up to three different visions, or a trifurcation of political orientations: autonomism, secessionism and annexation (Lluch, 2014, p. 3). Puerto Rico is shown to be a part of the sample analyzed by Lluch (2014), with its “tripartite taxonomy” being represented by PPD, PNP and the *Partido Independentista Puertorriqueño* (PIP). While the PPD supports the continuation of the autonomy project, the PNP is the sole representation of annexationism in Puerto Rico and PIP believes in outright independence. This does not mean that they encompass all voters that share these visions of sovereignty, but rather the fact that they are the only parties that openly claim to represent that vision.

The reason for this trifurcation, says Lluch (2014) lies in the moral polity of the stateless nationalist. A concept drawn from the concept of moral economy, the moral polity refers to the state inhabited by substate nationalists and shared with others, a state in which reciprocities and notions of collective dignity, commonweal, and mutual accommodation are part of the implicit social compact of living together (Lluch, 2014, p. 30-31). “The perception by these substate nationalists that their expectations of reciprocity have been violated by the central state is a factor that contributes to the increasing radicalization of nationalists’ political preferences” (Lluch, 2014, p. 31). Lluch’s (2014) findings in regards to substate national movements in Catalonia and Quebec show that secessionists and strong decentralizers alike form their preference as they perceive that the central state is not able to accommodate their substate national society, and because they have little trust in the central state (p. 30). Federalists, on the

other hand, have considerably more trust in the institutions of the central state: they are capable of reciprocating and accommodating their substate national society, and feel nothing against state nationalism (Lluch, 2014, p. 263).

When analyzing the situation of Puerto Rico, it is more accurate to focus on the majoritarian option within the trifurcation as a dependent variable that responds to the static autonomy, rather than attempting to explain the absence of secessionism. When faced with a static and retrenched autonomy, Puerto Ricans are abandoning autonomy as a choice and focusing on statehood. Extrapolating Lluch's findings to Puerto Rico would lead to the conclusion that Puerto Rican federalists perceive that, while the US has violated their expectations of reciprocity, the island's sovereignty as a nation best lies as the 51<sup>st</sup> state of the Union.

The question now is why would the Puerto Rican substate nationalist believe that the US is capable of reciprocating and accommodating its substate nation in such a close relationship, while perceiving that this same country has and is violating their expectations. This study contends that there are at least three key variables must be considered in order to reach a satisfactory conclusion: the rise in support for statehood at the expense of autonomism, the substate federalist's vision of federalism and sovereignty, and Puerto Rico's historical reality.

Puerto Rican voters have historically expressed themselves in favor of maintaining a close relationship with the US. When supporting an enhanced ELA, they asserted their self-determination rights in favor of a complete autonomy that also secured a permanent relationship with the US. As autonomism was rejected in 2012, statehood presented itself as the only *de novo*

option that still guaranteed a relationship with the country. Again in 2020, statehood was favored in a “yes or no” plebiscite where a vote for “no” could have meant anything from support for autonomy or secessionism to a simple rejection of federalism. This is not to suggest that independence dismisses a future relationship with the US. Rather, it highlights that the level of kinship Puerto Ricans seek in their relationship with the US is only contained within a substate relationship. When rejecting autonomy, they perceive federalism as the next best alternative that offers what they seek. Therefore, as support for autonomy wanes, support for federalism rises. This is more understandable when taking into account the fact that the number of Puerto Ricans in mainland US exceeds the number of Puerto Ricans on the island since 2006 (Cohn et al., 2014). Certainly, there seems to be little interest in exploring whether or not independence jeopardizes this relationship.

The substate nationalist’s vision of sovereignty and their vision of federalism is also important. Drawing from Lluch’s (2014) findings, substate nationalists that favor federalism tend to do so insofar as they understand federalism to be a system capable of fostering reciprocity, accommodation and mutual tolerance (p. 211). This understanding is anchored on an understanding of what federalism *is*, and what it *can be*. *Bundestreue* refers to the federal spirit; the bonds that bring together the political community and form the foundation of the federation: “faith, mutual trust, partnership, dignity, friendship, loyalty, consent, consultation, compromise, reciprocity, tolerance and respect” (Burgess, 2006, p. 113). Related to multinational federations, *Bundestreue* (literally meaning loyalty in German) not only characterizes the system’s essence, but it is also an animating force of its evolution (Burgess, 2006, p. 113). Although not currently a multinational federation, substate federalists in Puerto Rico must have the perception that the US

is intrinsically *able* to accommodate their expectations of reciprocity, commonweal and dignity. In other words, it is their appreciation that there must be an essence of *Bundestreue* within the American framework. Without this notion, it would be very difficult for them to argue for it.

Finally, Puerto Rico's historical reality cannot be excluded from the analysis. The island's autonomy retrenchments have evidenced that it remains a territory under full control of another country, otherwise referred to as a colony, as it has been for more than 500 years. Its current arrangement is undermined by jurisprudence that perpetuates Congress' full reign over Puerto Rico, recently upheld by SCOTUS in October of 2019 and again in May 2023 (*FOMBPR v. Aurelius Investment, LLC*; *FOMBPR v. Centro De Periodismo Investigativo, Inc.*). This singular experience undoubtedly has to account for the dependent variable, at least in a certain degree.

Albert Memmi's formulation of his own experience with colonialism in *The Colonizer and the Colonizer* helps in articulating to what extent the island's colonial history and reality influences its recent support for federalism (Sartre in Memmi, 1965/2010, p. 13). After establishing the dehumanizing effects of colonization on both sides, Memmi outlines two historically possible solutions for the colonized to remedy their situation, to be tried in succession or simultaneously. This is either to become different, or to reconquer all the dimensions that colonization took away (Memmi, 1965/2010, p. 100). In the colonized-colonizer relationship, the latter has all rights, enjoys every possession and benefits from every prestige (Memmi, 1965/2010, p. 100). Holding this true, the colonized can change his condition and become different by changing his skin to a tempting model at hand: the colonizer (Memmi, 1965/2010, p. 100). "The first ambition of the colonized is to become equal to that splendid

model and to resemble him to the point of disappearing in him” (Memmi, 1965/2010, p. 100). Said assimilation turns out to be impossible within the colonial framework, as it supposes emancipation and the toppling of the unequal relationship, so the only thing left to do is to revolt (Memmi, 1965/2010, p. 102-104).

In light of Memmi, the reason why Puerto Ricans herd towards statehood becomes even clearer. Insofar as they seek to maintain a relationship with the US, Puerto Ricans want to enjoy every “right, possession and benefit” that Americans have dwindled in their faces for years. The autonomy project has always promised a state of equals, or even better. However, when this proved not to be possible, they decided to support statehood instead. Again, secession does not offer what Puerto Ricans want: to reach a point in their relationship with the US where they are equal to mainland Americans, without renouncing their substate nation. Therefore, becoming *de jure* equal with them by joining the federation presents itself as the only option that accomplishes what they desire. Granted, Puerto Rico does not exactly fit into the conventional definition of colony in the way Memmi meant, or the way Tunisia was. Nevertheless, the island’s past and present cannot be ignored, as its current regime is rooted in racist jurisprudence that cemented Congress’ plenary powers over the island. Moreover, it is in the colonial context that Lecours (2021) appears to be correct in his assessment of the island, for when the reality penetrates Puerto Rican politics more fully, “independence could then receive more support at the expense of, for example, statehood” (p. 157).

## VII: Conclusions

This honors thesis has been successful in evaluating Andre Lecours' (2021) theory on the relationship between static and dynamic autonomies and the fostering of secessionist tendencies in the substate nationalist movements of Catalonia and Puerto Rico. Operating under the assumption that this theory offered a solid explanation for contemporary Catalan politics but an incomplete picture of the Puerto Rican state of affairs, various steps had to be taken in order to prove the hypothesis and reach a satisfactory conclusion. First, a working definition of autonomy had to be established. Then, a thorough discussion of the genus of theories preceding and influencing Lecours' work was warranted. Afterwards, a critical approach regarding the autonomies of Catalonia and Puerto Rico was necessary to understand their nature and current condition. Finally, the process of testing Lecours' theory regarding Catalonia and Puerto Rico confirmed the hypothesis to be correct, and successfully addressed the newly raised question.

Markku Suksi's (2011) work proved useful in determining the boundaries in which one region can be referred to as an autonomy. This was bound to be necessary, as it is one of those concepts that is generally but not accurately understood. In its etymology, the word autonomy conveys a quality of self-rule and self-determination. Suksi's approach is much more specific, employing a definition by negation strategy in which he first defines the principal characteristics of federalism. After doing so, he presents a provisional definition of territorial autonomy hinging on the reversal of the relationship between central and substate government that characterizes federal arrangements. Thus, the two forms of government constitute two ends of a continuum where a wide range of hybrid models are described.

After establishing a working definition of autonomy, it was necessary to review the genus of theories regarding variations of substate nationalism in multinational democracies. These theories are all related insofar as they place emphasis on the relation between central and substate politics and the fact that both perceptions and mutual interactions between the two are critical for explaining said variations. A review of the genus was necessary by itself, but it also brought on some benefits: it helped to analyze the substate nations' state of affairs, and it helped to understand the line of reasoning behind Lecours' thinking and the weaknesses within his approach. Michael Hechter's (2000) main contribution to the genus is the notion that decentralization in the form of federalism served as means for accommodation and amelioration of the "excesses of nationalism" (p. 19), which is coincidentally the form preferred by Puerto Ricans. Alain Gagnon et al. (2003) and their work on majority nationalism and its effect on minority nationalism helped in truncating the somewhat negative connotation in the term nationalism, and also helped in identifying the dipole of Castilian and Catalan nationalism in Spain. Kristin Bakke's (2015) quantitative approach towards the subject of decentralization furthered the notion that it is not a one-size-fits-all solution for conflict-ridden states, but rather contingent on various elements that are fluid and specific to each area. This placed a warning on reaching conclusions not adjusted to the reality of the region.

Without wanting to subtract from the contribution of others, Jaime Lluç's (2014) work on the internal variation in substate nationalism and his moral polity thesis proved to be the key to start solving Lecours' shortcomings. The perspective of the existence of a trifurcation of visions of sovereignty within substate national politics offered a broader perspective. Furthermore, its contingency on the moral polity of the substate nationalist, a qualitative

approach focused on perspectives, placed value in autonomy and federalism as options as equally valid as secessionism.

This framework led to a novel analysis of the autonomies of Catalonia and Puerto Rico. The Spanish democratization process of 1978 resulted in a chimera called “State of Autonomies”, an arrangement that is neither a federation or a unitary state but a state comprised of 17 Autonomous Communities, each with their own level of region-based autonomy. In it not being nation-based, Catalonia’s autonomy is proved to be static by design. Here, there is a hierarchy comprised of the Castilian nation at the center, and an equation between “nationalities” and other regions that also acceded to a Statute of Autonomy at the substate level. Moreover, the autonomy arrangements are always contingent on bipartisan agreements between the central and substate entity, with the caveat of the Constitutional Court to rule proceedings. Therefore, when Catalonia wished to broaden its powers within the arrangement, the system could not respond favorably. Without much more options, Catalans tended towards secessionism as they perceived the Spanish state of not being able to accommodate their needs as a nation.

Puerto Rico also presented itself to be a static autonomy that went as far as suffering from retrenchment. The commonwealth enacted in 1952 proved to be unsatisfactory soon thereafter, which is why the political leadership embarked on several attempts at reforming the arrangement. These efforts were varied in their nature, ranging from Congressional bills to Ad Hoc Committees and countless plebiscites. All of the attempts at reform ended with the disdain of the US Government, furthering the notion that the island’s autonomy was not subject to change. In 2012, Puerto Ricans ended over 50 years of support to ELA and its enhancement, and



chose statehood as their new vision of sovereignty. Ten years later, they ratified their preference for federalism in a “yes or no” plebiscite. All the while, support for independence never garnered more than 6%.

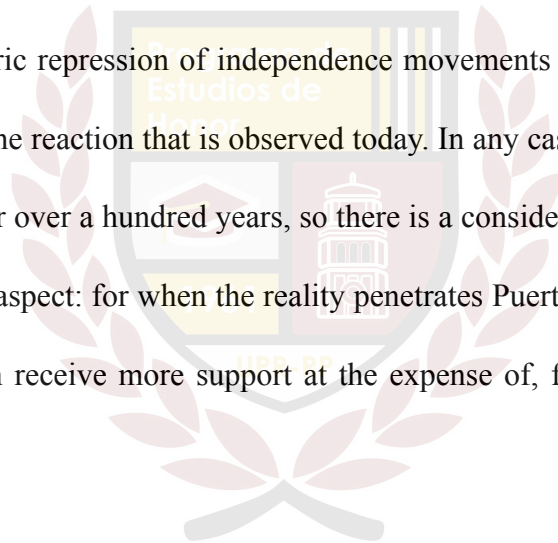
When analyzing Puerto Rico, a change in the dependent variable was warranted as Lecours’ (2021) three answers to Puerto Rico’s conundrum were not satisfactory. It was argued that the plebiscites created a singular context in the island, where change seemed possible. First, they fostered support for the enhanced ELA as it was portrayed to be feasible, and now they were fostering statehood at the expense of secessionism. Furthermore, moving to mainland US was characterized as an avenue of escape capable of solving the relationship between Puerto Ricans and the US government. However, it was demonstrated that, while support for enhanced ELA staved off secessionism in its time, the results of recent plebiscites show it is now a waning option. Independence was always an option within the atmosphere of possible change offered by plebiscites, and it could have easily gathered support at anytime. Nonetheless, when support for autonomy dwindled, support for statehood rose. In this context, support for one choice cannot serve as an excuse for the lack of support of the other. Lastly, the characterization of an individual choice like moving to the US as holding off support for secessionism was firmly discarded.

This raised the question of why Puerto Ricans currently prefer statehood over secessionism, when faced with the reality of their static and retrenched autonomy. The answer was a product of a three-dimensional analysis involving electoral results, perceptions of the substate nationalist, and the colonial paradigm. Results from the plebiscites evidence that Puerto

Ricans prefer a close relationship with the US. This was to be articulated through and enhanced ELA that offered broader powers and responsibilities within a permanent association with the US. Of the two *de novo* alternatives remaining, only one guaranteed the level of kinship Puerto Ricans desired of their relationship with the US: annexation. This choice is only understandable when taking into account the fact that substate federalists form their vision of sovereignty with the understanding that federalism is inherently capable of accommodating their nation and reciprocating their expectations of dignity, commonweal and respect (Lluch, 2014). This understanding is rooted in a creole version of *Bundestreue*, a concept that describes the federal spirit of multinational federations. Also known as the federal spirit, it refers to the fraternal bonds and values that bring the political community together, portraying a sense of partnership, dignity, consent, reciprocity and respect. In seeking a close relationship with the US, the substate federalists in Puerto Rico must perceive that the American federation has its own form of *Bundestreue*, and it is able to reciprocate and accommodate in a manner that is satisfactory to them even after previously having their expectations violated. It would be very difficult for them to argue for it without understanding this as true.

It is further argued that the island's historical reality as a colony cannot be ignored. In light of Albert Memmi's (1965/2010) work, the reason why Puerto Ricans herd towards statehood becomes even clearer. Insofar as they seek to maintain a relationship with the US, Puerto Ricans want to enjoy every "right, possession and benefit" that Americans have dwindled in their faces for years. Indeed, not only do they desire a close relationship with the US, they want to be equal to Americans. As proved earlier, when noticing that the autonomy project might not be feasible for their wants, they turn to statehood before independence.

The implications of this new perspective on Puerto Rico's conundrum are various. At last, there is a convincing explanation as to why there is a growing support for statehood on the island. This explanation can be further proved by modeling Lluich' (2014) approach towards explaining the different visions of sovereignty. Indeed, qualitative data derived from focus groups, interviews and questionnaires can help cement the idea that the substate nationalist in Puerto Rico majorly wants to keep a relationship with the US that is not offered by independence. Further, their notion of the US as a system being able to reciprocate their expectations and accommodate the Puerto Rican nation would be even clearer. Future studies can also incorporate the historic repression of independence movements in Puerto Rico from 1940s onwards as a variable of the reaction that is observed today. In any case, the fact is that statehood has eluded Puerto Rico for over a hundred years, so there is a considerable possibility of Lecours (2021) being right in one aspect: for when the reality penetrates Puerto Rican politics more fully, "independence could then receive more support at the expense of, for example, statehood" (p. 157).



## References

- Adams, E. C., & Rocher, F. (2014). (Mis)recognition in Catalonia and Quebec. In J. Lluch (Ed.), *Constitutionalism and the Politics of Accommodation in Multinational Democracies* (pp. 46–49). essay, Palgrave Macmillan.
- Bakke, K. M. (2015). *Decentralization and intrastate struggles: Chechnya, Punjab, and Québec*. Cambridge University Press.
- Barcia, M. G. (2014). Catalonia: The New European State? *ILSA Journal of International & Comparative Law*, 20(3), 399–421.
- Benedikter, T. (2009). *The World's Modern Autonomy Systems: Concepts and Experiences of Regional Territorial Autonomy*. Mahanirban Calcutta Research Group.
- Cabán, P. (2018). PROMESA, Puerto Rico and the American Empire. *Latino Studies*, 16(2), 161–184. <https://doi.org/10.1057/s41276-018-0125-z>
- Chandler, A. D. (2011). Puerto Rico's Eleventh Amendment Status Anxiety. *The Yale Law Journal*, 120(8), 2183–2197. <http://www.jstor.org/stable/41149589>
- Charles, G., & Fuentes Rohwer, L. (2021). No Voice, No Exit, But Loyalty? Puerto Rico And Constitutional Obligation. *Michigan Journal of Race & Law*, 26, 133-150. <https://www.proquest.com/scholarly-journals/no-voice-exit-loyalty-puerto-rico-constitutional/docview/2546656822/se-2?accountid=146213>
- Cohn, D. V., Patten, E., & Lopez, M. H. (2014, August 11). *Puerto Rican Population Declines on Island, Grows on US Mainland*. Pew Research Center. Retrieved April 26, 2023, from <https://www.pewresearch.org/hispanic/2014/08/11/puerto-rican-population-declines-on-island-grows-on-u-s-mainland/>

Comisión Estatal de Elecciones, Elecciones Generales 2012 y Consulta sobre el Estatus Político de Puerto Rico (2012). Retrieved from [http://168.62.166.179/eg2012/REYDI\\_Escrutinio/index.html#es/default/OPCIONES\\_NO\\_TERRITORIALES\\_ISLA.xml](http://168.62.166.179/eg2012/REYDI_Escrutinio/index.html#es/default/OPCIONES_NO_TERRITORIALES_ISLA.xml)

Comisión Estatal de Elecciones, Plebiscito para la descolonización inmediata de Puerto Rico (2017). Retrieved April 7, 2023, from [https://resultados2017.ceepur.org/Escrutinio\\_General\\_79/index.html#es/default/CONSULTA\\_DE\\_ESTATUS\\_Resumen.xml](https://resultados2017.ceepur.org/Escrutinio_General_79/index.html#es/default/CONSULTA_DE_ESTATUS_Resumen.xml).

Comisión Estatal de Elecciones, Plebiscitos de 1967, 1993 y 1998 (n.d.). <http://209.68.12.238/sobreCee/leyElectoral/pdf/Los%20Plebiscitos%20sobre%20el%20Status%20Politico%20de%20Puerto%20Rico%20de%201967,%201993%20y%201998.pdf>

Congressional Budget Office, Carroll, M., Pickford, M., Sperl, J., & Piper/Bach, P., Congressional Budget Office (2016). Retrieved from <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr5278.pdf>.

Consolidated Appropriations Act, Pub. L. No. 113-76, 128 Stat. 5 (2014). <https://www.congress.gov/113/plaws/publ76/PLAW-113publ76.pdf>

Costa-i-Font, J. (2010). Unveiling Vertical State Downscaling: Identity and/or the Economy?. Federal Reserve Bank of St Louis.

Cox Alomar, R. (2022). *Las Constituciones de Puerto Rico*.

de Galíndez, J. (1954). Government and politics in Puerto Rico: New formula for self-government. *International Affairs*, 30(3), 331–341. <https://doi.org/10.2307/2605753>

Developments in the Law: THE US TERRITORIES. (2017). *Harvard Law Review*, 130(6), 1654–1679. <http://www.jstor.org/stable/44865701>

- Dickovick, J. T. (2016). The Comparative Approach: An Introduction. In *Comparative politics: Integrating theories, methods, and cases* (pp. 6–20). essay, Oxford University.
- Dowling, A. (2014). *Catalonia Since the Spanish Civil War: Reconstructing the Nation*. Sussex Academic Press.
- El País. (2012). Rajoy rechaza el pacto fiscal por ser “contrario a la Constitución.” *El País*.
- Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment, LLC, 590 U.S. \_\_\_\_ (2020)
- Financial Oversight and Management Board for Puerto Rico v. Centro De Periodismo Investigativo, Inc., 598 U.S. \_\_\_\_ (2023)
- Gagnon, A.-G., Lecours, A., & Nootens, G. (Eds.). (2011). *Contemporary Majority Nationalism*. McGill-Queen’s University Press. <http://www.jstor.org/stable/j.ctt7zv3n>
- García Padilla exhorta a dejar la segunda pregunta en blanco. (2012). *El Nuevo Día*. Retrieved from <https://www.elnuevodia.com/noticias/politica/videos/garcia-padilla-exhorta-a-dejar-la-segunda-pregunta-en-blanco-121288/>.
- Generalitat de Catalunya, Entitat Autònoma del Diari Oficial i de Publicacions. (1993). *Estatuto de Autonomía de Cataluña*.
- Ghai, Y., & Woodman, S. (Eds.). (2013). *Practising self-government: A comparative study of autonomous regions*. Cambridge University Press.
- Glassman, B. (2019, September 26). *A Third of Movers From Puerto Rico to the Mainland United States Relocated to Florida in 2018*. US Census Bureau. Retrieved April 26, 2023, from <https://www.census.gov/library/stories/2019/09/puerto-rico-outmigration-increases-poverty-declines.html>

Greer, S. L. (2007). *Nationalism and self-government the politics of autonomy in Scotland and Catalonia*. ProQuest e-Book Central. State University of New York Press.

Guibernau, M. (2004). *Catalan nationalism: Francoism, transition and democracy*. Routledge.

Hechter, M. (2000). *Containing nationalism*. Oxford University Press.

Heine, J., & García Passalacqua, J. M. (1983). *The Puerto Rican question*. Foreign Policy Association.

In re: The Financial Oversight and Management Board for Puerto Rico, Microjuris (US District Court for the District of Puerto Rico March 3, 2023). Retrieved from <https://aldia.microjuris.com/wp-content/uploads/2023/03/2023.03.03-000090.00-Opinion-And-Order.pdf>.

Issacharoff, S., Bursak, A., Rennie, R., & Webley, A. (2019). What Is Puerto Rico? *Indiana Law Journal*, 94(1), 1–45.

Junqueras, O. (2021, July 7). *Mirant al futur*. Diari Ara. Retrieved April 15, 2023, from [https://es.ara.cat/opinion/mirando-futuro-oriol-junqueras\\_129\\_4011400.html](https://es.ara.cat/opinion/mirando-futuro-oriol-junqueras_129_4011400.html)

Lecours, A. (2021). *Nationalism, Secessionism, and Autonomy*. Amazon Kindle. Oxford University Press. Retrieved 2021, from [https://www.amazon.com/gp/product/B09GYP3FCP/ref=kinw\\_myk\\_ro\\_title](https://www.amazon.com/gp/product/B09GYP3FCP/ref=kinw_myk_ro_title).

Lecours, A., & Dupré, J.-F. (2020). The emergence and transformation of self-determination claims in Hong Kong and Catalonia: A historical institutionalist perspective. *Ethnicities*, 20(1), 3–23. <https://doi.org/10.1177/1468796818785937>

- Lecours, A., & Vézina, V. (2017). The Politics of Nationalism and Status in Puerto Rico. *Canadian Journal of Political Science*, 50(4), 1083-1101. [doi:10.1017/S0008423917000488](https://doi.org/10.1017/S0008423917000488)
- Lluch, J. (2014). *Visions of Sovereignty: Nationalism and accommodation in multinational democracies*. University of Pennsylvania Press.
- McCall, A. W. (2017). Why Congress Cannot Unilaterally Repeal Puerto Rico's Constitution. *Cornell Law Review*, 102(5), 1367–1399.
- Memmi, A. (2010). *The colonizer and the colonized*. Earthscan. (Original work published in 1965)
- Parchomovsky, G., & Stein, A. (2021). Autonomy. *University of Toronto Law Journal* 71(1), 61-90. <https://www.muse.jhu.edu/article/775158>.
- Puerto Rico Oversight, Management, and Economic Stability Act. 48 USC § 2101 (2016). <https://www.lexjuris.com/LexLex/Federales/BILLS-114s2328enr.pdf>
- Puerto Rico v. Sánchez Valle, 579 U. S. 59 (2016).
- Puerto Rican Federal Relations Act, Pub. L. No. 81-600, 64 Stat. 319 (1950). <https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/64/STATUTE-64-Pg319.pdf>
- Rivera Ramos, E. (2013). Puerto Rico: autonomy or colonial subordination? In Y. Ghai & S. Woodman (Eds.), *Practising self-government: A comparative study of autonomous regions* (pp. 91–117). essay, Cambridge University Press.
- Schachter, J., & Menchaca, A. (2021, December 21). *New Population Estimates Rely on Monthly Flight Data to Capture Puerto Rico's Migration Flows*. US Census Bureau. Retrieved



April 26, 2023, from <https://www.census.gov/library/stories/2021/12/net-outmigration-from-puerto-rico-slows-during-pandemic.html>

Suksi, M. (2011). *Sub-state governance through Territorial Autonomy: A Comparative Study in constitutional law of powers, procedures and Institutions*. Springer.

Torruella, J. R. (2018). Why Puerto Rico Does Not Need Further Experimentation With Its Future: A Reply To The Notion Of “Territorial Federalism.” *Harvard Law Review Forum*, 131(3), 65–104.

Trías Monge, J. (1982). *Historia constitucional de Puerto Rico* (Vol. III). Editorial de la Universidad de Puerto Rico.

Trías Monge, J. (1983). *Historia constitucional de Puerto Rico* (Vol. IV). Editorial de la Universidad de Puerto Rico.

Trías Monge, J. (1994). *Historia constitucional de Puerto Rico* (Vol. V). Editorial de la Universidad de Puerto Rico.

Trías Monge, J. (1997). *Puerto Rico: The trials of the oldest colony in the world*. Yale University Press.

U.N. Charter art. 1, para. 2.

US Department of Justice. (2014, April 13). *United States Department of Justice review of plebiscite ballot, voter education materials, and expenditure plan*. <https://www.puertoricoreport.com/wp-content/uploads/2017/04/Hon-Ricardo-Rossello-Nevares-Letter-DOJ-Apr-13-2.pdf>.