
Aprobada, Derrotada, Enrolada

The Unauthorized Substitution in Article II,
Section 12 of the Constitution of Puerto Rico

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July 25, 2026

Abstract

The Constitution of Puerto Rico prohibits slavery and involuntary servitude in Article II, Section 12. Its operative Spanish text carries an exception, “salvo la que pueda imponerse por causa de delito,” that no longer holds the gendered limiter the Convention’s approved text had used to keep slavery outside the exception, and that is reasonably susceptible of being read to reach slavery itself. This paper shows, from the record of the 1951 to 1952 Constitutional Convention, that this is not the text the Convention approved. The reported and twice-read text confined the exception to labor and barred slavery without qualification. At second reading, the Convention considered a substitute built on the term *servidumbre involuntaria* and defeated it by recorded vote. The enrolled constitution nonetheless carries *servidumbre involuntaria* and the unconfined exception, reaching the whole prohibition. The change was made after the decisive vote and before enrollment, and no located document discloses it. The paper traces the text through referral, the enrollment window, and adoption; it shows that the official English, the version Congress approved and put before the world, forbids penal slavery on its face while the operative Spanish is reasonably read to permit it; and it states the consequence Puerto Rico doctrine attaches to an enrolled text that departs from the enacted text. Under that doctrine, which treats engrossment as ministerial, a signed text that is not what the enacting body approved would be legally nonexistent; whether the doctrine governs an enrollment defect in the original constitution is a question of first impression, and it supplies the closest domestic rule. Ratification of a text identified to the electorate does not adopt a substantive alteration that no located document disclosed. The paper names no author for the substitution. It documents the act, its window, and its consequence, and presents the record for judgment.

I. Introduction: Two Texts

Two texts of Section 12 of the Bill of Rights of the Constitution of Puerto Rico are in the record, and they are not the same text.

The Convention approved this: “No existirá la esclavitud ni el trabajo involuntario salvo este último como consecuencia de delito público luego de mediar sentencia condenatoria.”

Neither slavery nor involuntary labor shall exist, save the latter as a consequence of crime after conviction. The exception is confined to labor. Slavery is barred without qualification.

The enrolled constitution states: “No existirá la esclavitud, ni forma alguna de servidumbre involuntaria salvo la que pueda imponerse por causa de delito, previa sentencia condenatoria.” Neither slavery nor any form of involuntary servitude shall exist, save that which may be imposed for crime after conviction. The exception is no longer confined. In place of the masculine *este último*, which had tied the exception to el trabajo, the enrolled clause carries the feminine *la que*, and the noun the floor had confined to labor has been replaced by the broader term, *servidumbre*. The exception, no longer held off slavery by gender, reaches the whole prohibition.

The difference between the two texts is not a difference of style. The operative term of the enrolled clause, *servidumbre involuntaria*, is the term the Convention considered and rejected. At second reading, a delegate moved to replace the approved language with a clause built on *servidumbre involuntaria* and argued that the word reached further than *esclavitud*. The Convention defeated the motion by recorded vote and then approved Section 12 in the form that confined the exception to labor. The term the enrolled constitution carries is the term the floor struck down.

This paper documents that sequence and traces the interval in which the approved text became the enrolled text. It establishes, from the Convention’s own record, four things: that the reported and twice-read text confined the penal exception to labor; that the Convention considered *servidumbre involuntaria* and defeated it by vote; that the referred text carried the confined language into the enrollment stage; and that the enrolled text, adopted weeks later in a single vote on the whole constitution, carries the defeated term and the unconfined exception. It then states the consequence Puerto Rico doctrine attaches to an enrolled text that departs from the text the enacting body approved.

The paper makes a narrow claim and holds to it. It does not claim that the Constitution of Puerto Rico was designed to authorize slavery. It claims that the operative Spanish text of Section 12 is reasonably susceptible of being read to permit slavery as a criminal punishment, that this reading was produced by a substitution made after the decisive vote and without authority, and that the substitution reversed a choice the Convention had made on the record, a reversal no located document discloses. The paper does not identify who made the substitution. The record establishes the act and its window; it does not yet establish the hand, and the paper does not supply one.

One matter belongs to the frame. On the subject of Section 12, the drafters faced no open question, and the answer was in their hands from the start. Early in the Convention, among the petitions and memorials read into its record, the Federation of Women of the Americas, through its observer to the United Nations, submitted a copy of the Universal Declaration of Human Rights “para que sirva de pauta en la redacción de la constitución,” to serve as a guide in drafting the constitution.¹ The delegates did not merely receive it; they drafted against it, matching clauses to its articles, aligning the equality section to its Article 2. The Declaration they worked from states its first flat prohibition in Article 4, before most of the rights it goes on to enumerate: no one shall be held in slavery or servitude, both barred, neither carrying an exception.² The Supreme Court of Puerto Rico has since held that the Bill of Rights was conceived *de factura más ancha*, built on that Declaration and the American Declaration of the Rights and Duties of Man.³ The delegates thus had their answer at the front of the document in front of them, and the floor text of Section 12 is what following it looks like: slavery barred without qualification, and the penal exception held to labor alone, reaching neither slavery nor servitude. This paper reserves for later work what that frame implies in law. It sets the frame here because it shows the enrolled departure for what it is, not a hard question decided wrongly, but a settled one, answered correctly on the floor and undone after the vote.

What follows is organized around the record. Part II sets the clause beside the five texts it has taken. Part III sets out the deliberative history through the decisive vote. Parts IV through VI follow the text from referral through the enrollment window to adoption. Part VII addresses the conflict between the operative Spanish and the official English. Part VIII states the legal consequence. Part IX sets out what remains open.

II. The Clause in Five Texts

The words of Section 12 did not arrive in 1952 from nothing, and they did not hold one shape. The prohibition of slavery, and the penal exception written beside it, have taken five forms

¹*Diario de Sesiones* p.254 (Peticiones y Memoriales Núm. 15).

²Universal Declaration of Human Rights art. 4 (1948).

³*E.L.A. v. Hermandad de Empleados*, 104 D.P.R. 436 (1975); *García Benavente v. Aljoma Lumber*, 162 D.P.R. 572 (2004).

for Puerto Rico, and no two of the five place the exception the same way. They are set out here as they read, in order, each with its date and its source.

The Thirteenth Amendment to the Constitution of the United States, 1865, in one sentence: “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”⁴ Both nouns in a single sentence, one exception standing after them.

The Organic Act of Puerto Rico, the Jones Act of 1917, in two sentences: “Slavery shall not exist in Porto Rico. Involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall not exist in Porto Rico.”⁵ Slavery in a sentence of its own, carrying no exception; the exception placed with servitude, in the sentence that follows.

The text the Constitutional Convention approved, 1952: “No existirá la esclavitud ni el trabajo involuntario salvo este último como consecuencia de delito público luego de mediar sentencia condenatoria.”⁶ Slavery barred without qualification; the exception fixed to *el trabajo involuntario* by the masculine “este último.”

The text the enrolled constitution carries, 1952: “No existirá la esclavitud, ni forma alguna de servidumbre involuntaria salvo la que pueda imponerse por causa de delito, previa sentencia condenatoria.”⁷ The two nouns are joined in a single clause; the floor’s “el trabajo involuntario salvo este último” becomes “servidumbre involuntaria salvo la que,” with the fixed masculine “este último” removed.

The official English of the same section, the version Congress had before it when it approved the constitution, 1952: “Neither slavery nor involuntary servitude shall exist except in the latter case as a punishment for crime after the accused has been duly convicted.”⁸ Both nouns; the exception confined by “in the latter case” to the second of them.

These are the five texts. The remainder of this paper concerns the enrolled Spanish, the fourth of them, and how it came to carry a term the Convention had defeated.

The antebellum and territorial lineage of the penal exception, from the Missouri Com-

⁴U.S. Const. amend. XIII, § 1.

⁵Organic Act of Puerto Rico (Jones Act), ch. 145, § 2, 39 Stat. 951 (1917).

⁶*Diario de Sesiones* p.1958.

⁷*Diario de Sesiones* p.3036.

⁸Pub. L. No. 82-447, 66 Stat. 327 (July 3, 1952).

promise forward, is the subject of separate, forthcoming work.

III. The Deliberative Record

The text of Section 12 was not the product of a single draft. It was reported, read, debated, and approved across a documented sequence. At every stage before enrollment, the exception was confined to labor and slavery was barred without qualification.

The clause originated in Proposición Núm. 272, filed by delegate Jaime Benítez, chairman of the Comisión de Carta de Derechos. That proposal treated slavery and the penal exception as separate matters. It barred the death penalty and slavery in one sentence and addressed involuntary servitude, with its exception, in another: “Jamás existirá en Puerto Rico la pena de muerte o la esclavitud. Tampoco se permitirá la servidumbre involuntaria salvo como castigo por delitos públicos luego de sentencia condenatoria.”⁹ Even at origin, the drafting isolated the prohibition of slavery in a clause that carried no exception. No proposal in the record placed slavery and the penal exception within a single shared sentence.

The Comisión de Carta de Derechos reported Section 12 to the Convention on December 14, 1951, over the signatures of Benítez as president and Bernardo Méndez as secretary. The reported text confined the exception to labor: “No existirá la esclavitud ni el trabajo involuntario salvo este último como consecuencia de delito público luego de mediar sentencia condenatoria.” The report stated the purpose of the clause in the committee’s own words. It explained that a declaration against slavery might appear an unnecessary survival were it not for the indirect and sometimes subtle forms that can lead to it in the various possibilities of forced or involuntary labor, “las formas indirectas y a veces sutiles que a ella pueden conducir de hecho en las varias posibilidades del trabajo forzado o involuntario,”¹⁰ and that all such labor, other than that declared by penal legislation and imposed under judicial authority, violated the fundamental rights of liberty and of freedom of labor. The exception the committee described attached to labor. The word *servidumbre* appears nowhere in the committee’s treatment of Section 12.

⁹Academia Puertorriqueña de la Historia, *La obra de la Convención Constituyente*, 1992, Vol. II, pág. 476, ítem II.

¹⁰Informe de la Comisión de Carta de Derechos, 14 dic. 1951, *Diario de Sesiones* p.3186.

The confined form was not an invention of the moment. The Organic Acts under which Puerto Rico had been governed carried the prohibition of slavery and involuntary servitude in two sentences, slavery barred in the first and the penal exception attached to *servidumbre involuntaria* in the second. The committee inherited that two-part structure but narrowed the exception's noun, fixing it to *el trabajo involuntario* rather than to the broader *servidumbre* the Organic Act had used. The inherited structure is the baseline; the floor's choice of the narrower noun is the measure from which the enrolled text later departed, back toward the very term the Organic Act had carried.

At first reading, the Convention read Section 12 in the protective form.¹¹

At second reading, the Secretary again read the reported text, confining the exception to “el trabajo involuntario salvo este último.” The Convention then worked the section amendment by amendment, each amendment put to a recorded voice vote. A proposal to strike the English phrase “bill of attainder” from the Spanish text was approved. A proposal by delegate Román García to bar the use of inmates as “cabos de galeras,” gang bosses, to enforce discipline in the jails and prisons was opposed by Benítez as a matter for penal legislation rather than the constitution, and was defeated.¹²

Delegate Gelpí then moved to add the word “firme” to the exception, so that it would read “sentencia firme condenatoria,” a final and unappealable sentence. His reason is instructive. Without it, he said, “podrían poner a trabajos forzados una persona condenada y que ha apelado y su sentencia no es firme todavía,” a convicted person whose appeal was still pending could be put to forced labor before the sentence became final. The delegates on the floor thus read the exception as one that authorized forced labor, *trabajos forzados*, imposed on the convicted. Benítez opposed the amendment, stating that the reported language “lo único que hace es copiar exactamente las disposiciones en este sentido de la Carta Orgánica actual,” and that the existing Organic Act adequately covered the matter. Gelpí answered that a constitution should say on its own face what it meant, and not send the reader to “libros verdes o amarillos” to learn it. The amendment was defeated.¹³

The record then reaches the moment that governs this paper.

Delegate Veray moved to strike the clause and replace it with a substitute reading “No existirá la servidumbre involuntaria excepto como castigo por la comisión de delito público,

¹¹ *Diario de Sesiones* p.1341.

¹² *Diario de Sesiones* p.1958.

¹³ *Diario de Sesiones* p.1959.

luego de mediar sentencia condenatoria.” He stated his reason on the record. The word *esclavitud*, he said, was antiquated, and *servidumbre* was “una palabra de significación más amplia que incluye la misma palabra ‘esclavitud’.” The motion is precise about what it sought. It would have installed *servidumbre involuntaria* as the operative term, dropping both *esclavitud* and *trabajo*.¹⁴

Benítez opposed the substitution. He explained that *servidumbre*, the classical term of the federal Thirteenth Amendment, was already covered by the prohibition of *trabajo involuntario* and by the labor protections placed in a later section, and that *esclavitud* should be retained not only for its historical value but because it reached beyond the historical condition of slavery to “cualquier otro sometimiento de unas personas a la voluntad y al poder de otros, sin recursos.” His was the older and broader sense of the word, in which slavery names a condition of subjection and not only a kind of labor.¹⁵

The Convention then voted. The presiding officer put the Veray amendment and announced the result in a single word: “Derrotada.” He then put Section 12 in its reported form and announced: “Aprobada.” Immediately afterward, delegate Rivera Colón asked to file a written explanatory vote against Section 12, which the presiding officer permitted within forty-eight hours.¹⁶

The significance of that sequence is narrow, and it is documented. The Convention did not overlook the term the enrolled constitution now carries. It considered *servidumbre involuntaria*, heard its proponent argue that the word reached further than *esclavitud*, heard the committee chairman explain why the confined text was preferred, and rejected the substitution by recorded vote. It then approved Section 12 in the form that confined the exception to labor. Whatever the enrolled text is, it is not the text the deliberative record produced.

The second-reading debate also fixes what the exception was understood to reach. Every amendment the Convention entertained treated the carve-out as one attaching to labor. Gelpí sought to confine the forced labor of an appealing convict to final sentences; Benítez tied the reported language to the labor provisions of the Organic Act; and the text the Convention approved carried the exception on “el trabajo involuntario.” Slavery, *esclavitud*, stood outside the carve-out at every point in the debate, barred without qualification. On the floor, the exception was a rule about labor.

¹⁴ *Diario de Sesiones* p.1960.

¹⁵ *Diario de Sesiones* p.1960.

¹⁶ *Diario de Sesiones* p.1960; Rivera Colón’s explanatory vote noted at pp.1960–1961.

IV. The Referral Instrument

The state of Section 12 that entered the enrollment stage is documented in a single instrument with an archival address. Having reported the Bill of Rights and seen it approved at second reading, the Comisión de Carta de Derechos printed the proposition as referred to the enrolling committee. The document is captioned “Proposición sobre Carta de Derechos, según aprobada en Segunda Lectura y referida a la Comisión de Redacción, Estilo y Enrolado para informe a Tercera Lectura,” and it carries the notation “Reconsiderada en Enero 26, 1952.”¹⁷

On its fifth page, the instrument sets out Section 12 in the form the Convention had approved: “No existirá la esclavitud ni el trabajo involuntario salvo este último como consecuencia de delito público luego de mediar sentencia condenatoria.” The exception is confined to labor. Slavery is barred without qualification. This is the text as it stood at the threshold of enrollment, after second reading and after the January 26 reconsideration, in a printed instrument held under a call number a reader can request.

The instrument is not a working draft or a private memorandum. It is the proposition as formally referred, printed under the Convention’s authority and directed to the Comisión de Redacción, Estilo y Enrolado for report to third reading. Its notation, “Reconsiderada en Enero 26, 1952,” places it after the Convention’s late-January reconsideration of the Bill of Rights. The text it carries is therefore the text as it stood not merely at second reading but after the last occasion on which the Convention reopened the Bill of Rights at all. Whatever the enrolling committee received, it received this.

The instrument matters for what it fixes. It is the last documented state of Section 12 before the enrolling committee’s work, and it reads *trabajo involuntario*, the exception confined to labor and slavery barred without qualification. Whatever happened to the clause happened after this instrument, and before the enrolled text, inside the interval and the custody the next section describes.

¹⁷Proposición sobre Carta de Derechos según aprobada en Segunda Lectura y referida a la Comisión de Redacción, Estilo y Enrolado, typescript CC-CD-3 c.1, pág. 5.

V. The Enrolment Window

The change to Section 12 falls within a bounded interval and within the custody of a single committee. The protective text was the referred text as of January 26, 1952. The enrolled text was adopted on February 4, 1952. In that interval, the proposition sat with the Comisión de Redacción, Estilo y Enrolado, whose chairman was Víctor Gutiérrez Franqui.

The Convention did not stand idle in that interval, and the enrolling committee's chairman told it plainly what the enrollment could and could not change. Presenting the enrolled Bill of Rights, he said the final text might bring changes "solamente en cuanto se refiere a la colocación y orden de las disposiciones, pero no en cuanto al lenguaje," only in the placement and order of the provisions, not in their language. Asked what to do if a concept approved at second reading still needed changing, he drew the line the record turns on. A printing error the committee could correct; but language that carried the approved concept could be changed only "mediante reconsideración por la Convención en pleno," by reconsideration in the full Convention.¹⁸

He then did exactly that. In the same session, he moved the Convention to reconsider two clauses of the enrolled text, one in the Bill of Rights and one in the article on executive appointments, and the Convention granted the reconsideration by a recorded vote of sixty-one. One of the two was a single-word change to the property clause, "por razón" to "para." Even that went to the full Convention.¹⁹ Section 12's change was a change of language, from the noun the floor approved to the noun it had defeated, and by the chairman's own rule it could be made only by reconsideration in the full Convention. It went to none.

What the enrolling committee could and could not do was stated on the floor during that same reconsideration. Addressing the function of the style committee, a delegate said its role was to be "puramente literaria; pero no, variar el concepto fundamental." The record thus carries, within the enrollment interval itself, the Convention's own statement that the committee could correct language but not change a fundamental concept. The record also names a working document: in the same session the committee's chairman referred to an *enrolado preliminar*, a preliminary engrossment described as an unofficial document of the style committee.²⁰

¹⁸ *Diario de Sesiones* p.2912.

¹⁹ *Diario de Sesiones* p.2913.

²⁰ *Diario de Sesiones* pp.2924–2925.

The limits of that committee were stated on the floor by its own chairman, and stated under scrutiny. During the enrollment period, the committee's authority became a matter of dispute, carried into the press, over whether it had exceeded its mandate on other provisions. Answering that dispute, the chairman of the Comisión de Redacción, Estilo y Enrolado set out what the *Reglamento* permitted and forbade. The committee was to give the approved text the best possible language and to flag contradictions “a fin de que la Convención pudiera pasar otra vez sobre los mismos.” And the *Reglamento*, he said, “le prohibió... hacer cambios de conceptos en el lenguaje redactado al adoptar los acuerdos en comisión total o en segunda lectura.” The committee was forbidden to change concepts.

He described the procedure that was to enforce the limit. The committee did not make its changes and declare them effective; “no hace sus cambios y los proclama como efectivos.” Each time it finished work on a proposition, that proposition “vuelve oficialmente, impresa en números suficientes para ser distribuidos a todos los delegados,” returning to the Convention and to public view in printed form, in the text as the committee had left it. Every change the committee made was to come back to the Convention before it counted.²¹

Against that record, Section 12 shows no corresponding act. It was not on the reconsideration list. It received no motion, no debate, and no vote in the interval during which the Convention amended other clauses of the same Bill of Rights by recorded vote. The procedure for changing an approved text was available and in use, clause by clause, and it was not used for Section 12. The change to Section 12 was a change of concept of the kind the chairman said the *Reglamento* forbade, and it never returned to the Convention in the printed form he said every change would take. It was made in the one way the Convention's own procedure did not allow: without a vote, and without a record.

The punctuation confirms it. The Organic Act, which the reported text was said on the floor to do no more than copy, separated the two prohibitions with a full stop; the floor text carried no comma at all. The enrolled clause introduced a comma after *esclavitud*, a mark that appears in neither. A committee confined to placement, and forbidden to change concepts, does not add a mark that bears on whether the penal exception reaches slavery.

²¹*Diario de Sesiones* pp.2924–2925.

VI. Adoption and Adverse Confirmation

The enrolled text was adopted at third reading on February 4, 1952. The Convention approved the engrossed Spanish text as a whole, by a roll-call vote of eighty-eight to three. The three recorded negatives were delegates González Blanes, Llobet, and Orsini Martínez. The vote was on the entire constitution. The record shows no section-by-section reading and no separate consideration of Section 12.²²

The eighty-eight-to-three vote is the strongest ground for saying the Convention itself adopted the enrolled Section 12, and it does not reach the finding. That an entire constitution was adopted in a single vote is not, by itself, a reconsideration of any particular clause. The vote took the engrossed text as a whole; it isolated no clause and disclosed no change. Whatever Section 12 said in the document before the delegates that day, the vote neither examined it nor approved it apart from the rest.

Adoption in that form is the ordinary last step of engrossment. The engrossed text is approved as a whole on the premise that it faithfully renders what the body already decided, clause by clause, at the earlier readings. The third-reading vote is not an occasion for re-deciding any clause. It is the moment at which the decided clauses, correctly transcribed, become the instrument. Its authority therefore runs to the text the Convention decided, and reaches the enrolled text only so far as the enrolled text is that decided text. Where the two diverge, the third-reading vote does not close the gap. It presupposes there is none. Even if third reading operated as final approval of the instrument before the body, the question is whether that general vote also satisfied the Convention's own procedure for changing an already-approved concept. The record shows that a change of concept required specific reconsideration, that the Convention used that route for other clauses in the same weeks, and that the engrossed instrument was presented on the premise that no concept had changed. A general final vote cannot stand as the specific reconsideration that procedure required.

The enrolled reading is confirmed from an adverse source. In the appendix to the proceedings, the Socialist delegation filed an explanatory vote describing the approved Section 12 as prohibiting "la esclavitud y la servidumbre involuntaria."²³ A delegation adverse to the

²²*Diario de Sesiones* pp.2958–2959.

²³*Diario de Sesiones*, Apéndice A65–A66 (announced at pp.2959–2960).

majority thus read the adopted clause as carrying *servidumbre involuntaria*, which confirms what the enrolled text says. It is description, not authorization. An explanatory vote filed after adoption records how a clause was read; it neither discloses that the term had been substituted nor supplies the reconsideration the substitution would have required.

The vote confirms in a second way. The Socialist delegation was among the delegates most inclined to scrutinize the article, and it read Section 12 as though *servidumbre involuntaria* had always been its term. It did not remark that the term differed from the one the floor had approved, because no located document before the delegates presented the enrolled term as a departure from the approved text. That an adverse reader recorded the enrolled term without remarking on the recorded defeat supports the inference that the change was not disclosed as a substantive one, and it anticipates the same difficulty the ratifying electorate would face.

One structural comparison closes the deliberative account. The enrolled Section 12 folds slavery and involuntary servitude into a single clause governed by one exception. No text in the drafting record does that. Even *Proposición 272*, the origin proposal, kept slavery in a sentence that carried no exception. At report and at both readings, slavery was barred and the exception confined to labor; the referral instrument carried the same. Only in the enrolled text do slavery and servitude share a clause and an exception. The drafting history moves in one direction, toward confining the penal exception; the enrolled text moves the other way, and it does so at the single stage that left no record. The enrolled formulation is less protective than every stage the record preserves, including the one from which the clause began.

VII. The English–Spanish Conflict

The enrolled constitution exists in two official languages, Spanish and English, and both are official texts. On the question this paper concerns, they do not say the same thing, and the difference is not one a translation can explain.

The operative domestic text is the enrolled Spanish, and it is the text the Supreme Court of Puerto Rico applies. The court has reproduced Section 12 in the enrolled Spanish more

than once. In *Brunet Justiniano v. Hernández Colón*,²⁴ it set out the clause in full, “no existirá la esclavitud, ni forma alguna de servidumbre involuntaria salvo la que pueda imponerse por causa de delito, previa sentencia condenatoria”; in *Ramos Acevedo v. Tribunal Superior*,²⁵ it stated that Section 12 “dispone que ‘[n]o existirá la esclavitud, ni forma alguna de servidumbre involuntaria’ ”; and the enrolled text appears again in the earliest of the three, *Pueblo v. Reyes Morales*.²⁶ The exception is introduced by *salvo la que*. The relative *la que* is feminine and singular. The floor text had fixed its exception with the masculine *este último*, which could reach only the masculine *el trabajo involuntario* and not the feminine *la esclavitud*; the grammar itself held slavery outside the carve-out. The enrolled feminine *la que* removes that lock. Its nearest antecedent is *forma alguna de servidumbre involuntaria*, and on the ordinary reading the exception attaches there. That does not spare slavery. Veray, in moving to install *servidumbre*, had told the Convention it was “una palabra de significación más amplia que incluye la misma palabra ‘esclavitud,’” broad enough to take in slavery itself, and the Convention defeated his motion; the enrolled exception now rests on the very noun its mover had called broad enough to reach *esclavitud*. The clause offers more than one feminine noun besides, *la esclavitud* among them, and nothing in its grammar holds slavery outside the exception as the masculine *este último* had. Freed of that lock, the exception reaches the whole prohibition, and the enrolled Spanish is reasonably read to permit penal slavery. Which reading a court would ultimately adopt the documentary finding does not turn on: whatever the enrolled text now permits, it is not the text the Convention approved. No Puerto Rico court has read the clause otherwise or noticed that it departs from the floor text.

The official English states the opposite rule. In the official English of the Constitution, the version Congress had before it when it approved the instrument by Public Law 82-447,²⁷ Section 12 reads: “Neither slavery nor involuntary servitude shall exist except in the latter case as a punishment for crime after the accused has been duly convicted.” The words “in the latter case” confine the exception to the second of the two prohibited things, involuntary servitude, and hold it away from slavery. On its face, the official English forbids penal slavery. It is not, however, a faithful rendering of the operative Spanish, and it matches neither Spanish version in the record. It carries the broad noun the floor had rejected, as the enrolled Spanish does, yet it confines the exception, as the floor text did. It is a third formulation,

²⁴130 D.P.R. 248, 264 (1992).

²⁵133 D.P.R. 599 (1993).

²⁶93 D.P.R. 607 (1966).

²⁷66 Stat. 327 (July 3, 1952).

and its authorization, its source text, and its provenance are not established by anything in the record. What is established is that it is the official English of the Constitution Congress approved, the text of Section 12 presented to Congress and to the world.

The exception makes the point sharper. The official English confines the carve-out to “the latter case,” the construction the floor used in “salvo este último,” except the latter. The enrolled Spanish uses neither: “salvo la que pueda imponerse” is not “the latter” but “that which may be imposed.” Render the official English faithfully into Spanish, and you write a confined exception on the latter of the two prohibitions, not the open “salvo la que” the enrolled text carries. On the exception, as on the rule, the English keeps the text the Convention approved and parts from the text it enrolled.

The two official texts state opposite rules on the single question of penal slavery, and both have legal force. The English expressly confines the exception to “the latter case,” involuntary servitude, and forbids penal slavery on its face. The enrolled Spanish carries the broad noun with the exception unconfined, reaching the whole prohibition, and is reasonably read to permit penal slavery. A constitution cannot mean two opposite things in its two official languages. What they share is the term the Convention defeated: each carries *servidumbre involuntaria*, not the *trabajo involuntario* the floor approved. They part on the exception, and on the one question that matters, whether penal slavery is permitted.

For the ordinary purposes of Puerto Rico law, the question of which text governs is already answered in practice. The enrolled Spanish is the text compiled in the Laws of Puerto Rico Annotated, applied by the courts, and taught as the constitution. Where the Spanish and English texts of a Puerto Rico statute diverge, the Civil Code makes the Spanish text prevail, both where the statute is of Spanish origin and, by default, where its origin cannot be resolved.²⁸ That canon is written for statutes of the Legislative Assembly, and no court has applied it to Section 12; but the constitution was drafted, debated, and adopted in Spanish, and the courts have simply applied the enrolled Spanish as the constitution. Each time Section 12 has come before the Supreme Court, it has appeared in the enrolled Spanish, without pause and without any indication that another text had ever stood in its place. The operative constitution of Puerto Rico, as it functions, carries the substituted clause. The official English, though it is the version Congress approved, is a version the domestic courts do not apply. The divergence is therefore not a curiosity of two archives. It is a divergence between the text under which Puerto Ricans live and the text the world was shown, and the text under

²⁸ *Basora v. Padilla*, 62 D.P.R. 332 (1943) (applying the default rule, Civil Code art. 13(c)).

which they live is the one that was never approved.

The natural first reading of a divergence like this is that the English mistranslates the Spanish. On the exception, the record inverts that reading: the English keeps the text the Convention approved, and the enrolled Spanish is the departure. That divergence is not a translation artifact. A translation does not install a term a convention defeated by recorded vote, does not appear in only one of two official languages, and does not reverse the rule of the text it purports to render. This paper does not resolve who produced the English formulation or from what source, any more than it names the hand behind the Spanish substitution. It establishes the contradiction, which is on the official record and needs no hand to be read.

One further fact belongs to the record. When Congress reviewed the Constitution, it did not leave the Bill of Rights untouched. It approved the instrument except section 20 of Article II and conditioned section 5, a reshaping the Supreme Court has described in *Puerto Rico v. Sánchez Valle*.²⁹ Section 12 was not among the provisions Congress altered. The English Section 12 that Congress read confined the exception on its face, so the divergence from the operative Spanish was not visible in the text before it. That same English text was the version carried into the United Nations review of Puerto Rico's status in 1953, a matter this project takes up in later work.

VIII. Legal Consequence

The finding of the preceding sections is documentary. An approved constitutional text was altered, after approval and before enrollment, in a way the Convention had considered and rejected by recorded vote. The legal consequence of that finding is narrow. The precise question has not been decided in Puerto Rico, but the closest domestic rules, on enrolment and on ratification, point in a single direction.

Enrolling and certifying an approved measure is a ministerial act, not a discretionary one. The Supreme Court of Puerto Rico has held that to enroll and certify an approved measure, as steps preliminary to its transmittal, “no son actos discrecionales.”³⁰ Once both readings approve a text, the court explained, the measure “pasa a ser cosa única de la Asamblea Leg-

²⁹579 U.S. 59, 65 (2016).

³⁰*Acevedo Vilá v. Aponte Hernández*, 168 D.P.R. 443 (2006).

islativa,” and reopening it requires the formal path of reconsideration, not the discretion of a committee. The enrolling committee’s charge was to engross the approved text, not to reconsider it. Installing during engrossment a term the floor had defeated is not an exercise of the ministerial function. It is an act the ministerial function does not contain.

The distinction between the ministerial and the discretionary is not abstract here, because the Convention’s own record marks it. The route by which an approved text could be reopened existed, and the Convention used it in the same weeks: a recorded vote to recall the proposal and a separate recorded vote on each amendment, the procedure described in Part V. The enrolling committee was not that route. Its function, as the floor stated during the reconsideration, was to be “puramente literaria; pero no, variar el concepto fundamental,” and its own chairman acknowledged that the *Reglamento* forbade the committee to make “cambios de conceptos.” A change from the term the floor approved to the term the floor defeated is not a literary correction. It is a change of the kind the reconsideration route existed to make, made outside that route.

Where the enrolled instrument is not the text the legislature approved, Puerto Rico doctrine is explicit about the result. In *Shell Co. v. Sancho Bonet*,³¹ the court stated that if the law the Governor signed was not the one the Assembly approved, it “sería completamente nula y más que nula, inexistente.” That is the rule this record engages.

The natural answer is that *Shell* and its companion, *Agudo v. Domenech*,³² each sustained the law before it, and so stand for tolerance of enrollment discrepancies rather than for nullity. The answer does not survive the distinction. *Shell* sustained because a concurrent resolution had corrected a clerical error to conform the text to what the Assembly approved, and because it presumed a silent record reflected an unrecorded omission. *Agudo* permitted the correction of “un verdadero error en su enrolamiento” while barring any act that would “añadirle o quitarle a un proyecto.” Both cases corrected toward the approved text. Section 12 is the inverse. Its enrolled text departs from the recorded floor decision and installs the term the floor defeated, a substantive change of the kind *Agudo* forbids, and *Shell*’s presumption of a silent record cannot operate on a record that is not silent. The record says “Derrotada.”

The constitution was ratified by the People, and the State’s strongest position is that ratification cured whatever preceded it. It did not. Whether a constitutional text was adopted in accordance with the governing law is a judicial question, and a text submitted in disregard of

³¹55 D.P.R. 576, 578 (1939).

³²49 D.P.R. 884 (1936).

the constitutional mandate is ineffective though the vote favor it.³³ The leading persuasive line is *Koehler & Lange v. Hill*,³⁴ which voided a popularly ratified amendment because the ratified text differed from the text the legislature had approved as its journals showed. It matters not, the court held, if every adult person in the State should desire and vote for the amendment; it cannot be valid unless adopted in pursuance of the constitution. In that setting, the legislative journals are the primary evidence and the enrolled instrument only secondary, an inversion of the enrolled-bill presumption of *Field v. Clark*,³⁵ and a later body's curative recital contradicted by the record is itself a nullity. What is not submitted to the electorate is not adopted by it.³⁶

The record meets those rules. No pre-ratification publication of the floor-approved text has been located, so a voter in March 1952 had no document against which to measure the enrolled clause. The ratifying vote was a single vote on the whole instrument, with no vehicle to isolate Section 12. A ratifying electorate adopts the constituent body's act as submitted to it. It does not adopt a substantive alteration made without authority, absent from every located document before the electorate, and not identifiable as a change from the materials it was given. No Puerto Rico court has decided this question. It is one of first impression.

Ratification cannot be separated from the lawfulness of the act submitted to the People for their consideration. The electorate was not convened to draft a constitution on its own, nor to cure undisclosed departures from the Convention's decisions. It was convened to approve the text presented to it as the constitution lawfully framed and submitted by the Constitutional Convention. That representation was part of the very object of the ratification.

If a general vote sufficed to validate any language the enrolled instrument carried, though the Convention had never approved it, the recorded votes on the floor, the procedure of reconsideration, the limitations placed on the Comisión de Redacción, Estilo y Enrolado, and the referral instrument itself would have no legal effect. It would be enough for the approved text to be replaced during enrollment for a final vote on the whole instrument to transform that substitution into an act of the Convention. The constituent procedure would then be displaced by mere control of the final manuscript.

The record shows precisely the opposite. Constituent authority remained in the Conven-

³³*McConaughy v. Secretary of State*, 119 N.W. 408 (Minn. 1909).

³⁴60 Iowa 543 (1883).

³⁵143 U.S. 649 (1892).

³⁶*Cunningham v. Exon*, 300 N.W.2d 6 (Neb. 1980).

tion sitting as a full body, and every substantive change required the reconsideration that the Reglamento itself provided and that the Convention used for other clauses. Ratification may confer democratic legitimacy on a text lawfully submitted. It cannot convert into a decision of the Convention a substitution the Convention never approved.

The consequence of the finding is not that a court rewrites the constitution. It is the opposite. The operative content of Section 12 is the text the Convention approved, which is the text the ratification reached through the act it ratified. To recognize that content is to identify the enacted text, not to amend it, and the amendment power of Article VII is not engaged. A court that declared the enrolled substitution never validly adopted would not add a provision to the constitution or strike one. It would state what the constitution, correctly identified, already contains. That is the ordinary work of construction, not the extraordinary work of amendment.

One further principle bears on any attempt to validate the enrolled clause by appeal to consent or to the passage of time. To the extent the enrolled text is reasonably susceptible of being read to reach slavery, it reaches a matter on which consent does no work: a peremptory norm admits no derogation, and an instrument measured against it is not cured by having been agreed to. That principle is argued here only in the interpretive register the domestic authorities allow it, and it is placed last because the finding does not depend on it. The narrowest coherent consequence of the record is the declaratory one. The enrolled substitution was never validly adopted, and the operative text is the one the Convention approved.

IX. What Remains Open

This paper establishes a documentary finding and the doctrine that governs its consequence. Several questions remain open, and stating them plainly is part of the discipline the finding requires.

The first is authorship. The record locates the change within a bounded interval and within the custody of the enrolling committee. It does not disclose who made the change, on whose instruction, or with what intent. No minute of the Comisión de Redacción, Estilo y Enrolado recording an alteration to Section 12 has been located. The library that held the Convention's records reports that the committee's minute-book was transferred to the

Archivo General, where the signed engrossment materials and the preliminary engrossment the record names have not yet been examined. This paper names no actor. It establishes what the record proves, that an approved text was altered against a recorded vote in the interval before enrollment, and it leaves the question of a hand to documents that may yet answer it.

The interval has an inner boundary the record does not fix. The text distributed to the delegates for the third-reading vote on February 4 is not in the record, so whether Section 12 already carried the substitution when they voted, or received it in the days between that vote and the signing on February 6, cannot be said. The finding does not turn on which. The Convention never considered or approved *servidumbre involuntaria* after it defeated the Veray motion, whichever day the word entered the page.

The second is the documentary record itself. The proceedings survive in more than one edition, and their pagination does not run in parallel. The findings here are pinned to the official government edition of the *Diario de Sesiones*, which is complete and public; a full concordance across the newspaper-format *Diario* and the official printing is a convenience still being assembled. Nothing in the finding turns on it. It is owed to the reader who will want to follow each citation to its source.

The third is legal. Whether ratification cures an unauthorized substitution of this kind in a constitution, as distinct from a statute, is a question no Puerto Rico court has decided. The authorities assembled here point in one direction, and it is the direction the record supports, but the question is one of first impression and this paper states it as such.

The fourth is the state of the literature. A citator and database sweep found no court and no commentator that has previously identified the divergence between the floor text and the enrolled text of Section 12. That is evidence of novelty, not proof of it. The claim of first notice is made against the record as searched, and it is open to correction by any source the search did not reach.

A fifth matter is set aside on purpose. This paper takes the enrolled clause to be reasonably susceptible of being read to reach slavery, and it does not press the stronger reading that the clause authorizes slavery outright. Neither does it develop the measure against which that reach would be assessed, the definition of slavery settled in international law and the human-rights frame the drafters were working from, beyond noting that the definition existed and predated the Convention. Those questions, and the consequences that follow from them, belong to later work in this series. The finding here is documentary and its consequence

domestic. The larger argument is not developed in these pages, so that the finding is not asked to carry it.

The finding does not depend on the resolution of these questions. It depends on the record already in hand, which shows a text approved, a substitute defeated, and an enrolled clause that carries the defeated term. What remains open is who made the change, and what a court will resolve. What is settled is what the Convention voted, and what appeared in the constitution instead.

Appendix A. The Floor-to-Enrolled Diff, by Clause

Section 12 has four clauses. The floor-approved text is the text read at first and second reading and carried in the referral instrument; the enrolled text is the text of the promulgated constitution. Each clause is set out in both forms, with the changes classified. Substantive changes are those that alter the operative rule; the others are matters of wording.

Clause one (slavery and the penal exception). Floor: “No existirá la esclavitud ni el trabajo involuntario salvo este último como consecuencia de delito público luego de mediar sentencia condenatoria.” Enrolled: “No existirá la esclavitud, ni forma alguna de servidumbre involuntaria salvo la que pueda imponerse por causa de delito, previa sentencia condenatoria.” Changes: (1) “el trabajo involuntario” became “forma alguna de servidumbre involuntaria.” The noun the floor approved was replaced by the noun the floor had defeated by recorded vote. SUBSTANTIVE. (2) “salvo este último” became “salvo la que pueda imponerse.” The exception had been fixed to the masculine “el trabajo involuntario” by the masculine “este último”; the feminine “la que” removed that gender key, so that the exception is no longer tied by grammar to labor alone. SUBSTANTIVE. (3) “delito público” became “delito,” dropping the qualifier that limited the exception to public crimes. POTENTIALLY SUBSTANTIVE; the paper does not resolve the meaning of *delito público* in 1952 Puerto Rico law and does not rely on this alteration. (4) A comma was added after “esclavitud.” It appears in neither the floor text, which carried no comma, nor the Organic Act the committee said it was copying, which used a full stop between the two prohibitions. The mark is therefore

introduced, not transcribed. Its grammatical effect is contested and is treated in Part VII. It is carried here as further evidence that engrossment worked at the level of concept and not of style, together with the noun and the pronoun. No hand and no purpose are inferred. SUBSTANTIVE-structural.

Clause two (cruel and unusual punishment). Floor and enrolled: “No se impondrán castigos crueles e inusitados.” No change.

Clause three (suspension of civil rights and suffrage). Floor: “La suspensión de los derechos civiles y del derecho al sufragio cesará al cumplirse la pena impuesta.” Enrolled: “La suspensión de los derechos civiles incluyendo el derecho al sufragio cesará al cumplirse la pena impuesta.” Change: “y del derecho al sufragio,” a second object coordinate with “los derechos civiles,” became “incluyendo el derecho al sufragio,” which subsumes suffrage within civil rights. SUBSTANTIVE-structural: it reclassifies the right rather than merely rewording it. Carried here as evidence that engrossment involved structural revision within Section 12, not as proof of identity or purpose and not as an independent ground; the direction of its effect is not established.

Clause four (ex post facto and attainder). Floor: “No se aprobarán leyes ex post facto ni proyectos para condenar sin formulación de causa (bill of attainder).” Enrolled: “No se aprobarán leyes ex post facto ni proyectos para condenar sin celebración de juicio.” Changes: (1) the English gloss “(bill of attainder)” was removed. This change was approved on the floor at second reading, on delegate Reyes Delgado’s motion, and is authorized. (2) “sin formulación de causa” became “sin celebración de juicio.” Wording.

The load-bearing deltas are the two in clause one. Clause three and the added comma corroborate the editing hand, marks that the committee worked at the level of concept and not of style. Clauses two and four are unchanged or authorized or stylistic. The one place the operative rule of Section 12 moved is the place the deliberative record shows the Convention deciding the question by vote.

Appendix B. The Seven Instruments

Each stage of Section 12 is fixed by a document a reader can request. Addresses are given as held.

1. *Origin. Proposición Núm. 272.* The proposal that began the clause, treating slavery and the penal exception in separate sentences.³⁷
2. *Committee report. Informe de la Comisión de Carta de Derechos, 14 December 1951.* Reports Section 12 in the protective form and states the labor rationale.³⁸
3. *First reading.* Section 12 read in the protective form.³⁹
4. *Second reading.* The clause worked amendment by amendment: Román García's motion to bar the use of inmates as *cabos de galeras* opposed by Benítez and defeated (p.1958); Gelpí's motion to add firme to the exception opposed and defeated (p.1959); the Veray motion to install *servidumbre* defeated, and Section 12 approved, both by recorded voice vote (p.1960).⁴⁰
5. *Referral.* The proposition as approved at second reading and referred to the Comisión de Redacción, Estilo y Enrolado, captioned accordingly and bearing "Reconsiderada en Enero 26, 1952," with Section 12 in the protective form on its fifth page.⁴¹
6. *Reconsideration in the enrollment window.* The enrolling chairman's statement that the enrollment could change placement but not language (pp.2912–2913); his rule that approved language could be changed only by full-Convention reconsideration; and the reconsideration he then moved for two other clauses, granted by sixty-one votes. His defense of the committee's mandate, that its work was to be "puramente literaria; pero no, variar el concepto fundamental" and that the *Reglamento* forbade "cambios de conceptos," appears at pp.2924–2925. Section 12 received none of the reconsideration route.⁴²

³⁷ Academia Puertorriqueña de la Historia, *La obra de la Convención Constituyente*, 1992, Vol. II, pág. 476, ítem 11 (published edition).

³⁸ Typescript, CC-CD-2 c.1, internal p.34 (photographed 13 July 2026, IMG_2020); reproduced in the printed *Diario de Sesiones* at p.3186.

³⁹ *Diario de Sesiones* p.1341.

⁴⁰ *Diario de Sesiones* pp.1958–1960; Rivera Colón's explanatory vote noted at pp.1960–1961.

⁴¹ Typescript, CC-CD-3 c.1, pág. 5.

⁴² *Diario de Sesiones*, official government edition, pp.2912–2913 and 2924–2925; the broader reconsideration sessions run to about p.2925. The same event is recorded in the newspaper-format set (Biblioteca Legislativa "Copia única," JL 1043 .Z8 P95 1951 c.1) at pp.825–827.

7. *Adoption.* Third reading, 4 February 1952, the engrossed constitution approved as a whole by a roll-call of eighty-eight to three, the three negatives being delegates González Blanes, Llobet, and Orsini Martínez.⁴³

Appendix C. Edition Concordance

The proceedings survive in more than one edition, and the paginations do not run in parallel. The pages below are from the official government edition of the *Diario de Sesiones*, which is complete and available online; where an event was also captured in the newspaper-format set, that page is given too. The two paginations differ, and mapping every event between them is a convenience for the reader, not a condition of the finding.

Event	Official government edition	Transcription variant	Newspaper-format set	Status
First reading	p.1341	-	-	verified
Second reading, Veray defeat and approval	pp.1958–1960	pp.1957–1959	-	verified; variant is a ~1-page offset
Benítez definition	p.1960	-	(Brunet cites “3 Diario 1603”)	verified
Printed informe rationale	p.3186	p.3185	-	verified
Enrolled Section 12	p.3036	p.3035	-	verified

⁴³*Diario de Sesiones*, official government edition, pp.2958–2959; the Socialist explanatory vote in the appendix, Apéndice A65–A66. The enrolled Section 12 appears at *Diario de Sesiones* p.3036. Official 1952 printing: Raro PR 342.7295 D539.

Event	Official government edition	Transcription variant	Newspaper- format set	Status
Reconsideration of two clauses (property; executive appointments), 61 votes	2912–2913	-	pp.825–826	verified ("Sesenta y un votos")
Third reading, 88–3	2958–2959	-	p.886	verified
Socialist explanatory vote	appendix	-	Apéndice A65–A66	announced pp.2959–2960

The one-page offset between the official government edition and the transcription variant (1958–1960 / 3036 / 3186 against 1957–1959 / 3035 / 3185) is consistent across every point checked, and it reflects a transcription difference, not a rival edition. The government edition of the *Diario de Sesiones* is complete and public, and it is the edition cited throughout.