

*“How the Commonwealth Status of Puerto Rico and the Financial Debt
Crisis has shaped the Puerto Rican Labor Regulations, Labor Market
and the Effects on its Citizens”*

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In the core of Puerto Rico's recovery journey are many labor reforms to provoke a catalyst for growth. It seems like every time the island needs to confront their financial obligations or make changes in the structure, the labor market and the Puerto Rican workforce is the subject matter they like to start with. This has resulted in years of neglect to the workforce who is never the top priority. The manipulation of the workforce to the states advantage, traces back from the beginning of the establishment of the commonwealth. There has been a lack of economic transformation emphasis, which is my reason to research the island's economic and legal experience. The research goes as follow; A.) *Early-Organized Labor Movement in Puerto Rico*, B.) *First and Second Labor Market Changes*, C.) *Current Puerto Rican Employment Law & Fair Labor Standards Act Controversies*. In 1952, The United States recognized Puerto Rico as a commonwealth, which indicates the island has been self-governing ever since. Because of a commonwealth political status, which most people agree is oppressive, the labor market and employment laws have been highly regulated and constantly going through changes.

Presently, these labor regulations are highly costly for employers and implies with high risk for businesses. These constant changes have transformed the labor market into being one with fewer opportunities for Puerto Ricans. Labor reform and labor laws are the current topic been discussed to help with the debt crisis. Currently, this has left the Puerto Rican society feeling manipulated constantly under a financial crisis or a rigorous unbeneficial colonial regulation. The labor market's lack of participation has been a product from the instability the Puerto Rican society has been through, only for the benefit of the government finances. As a result, around 200 Puerto Ricans a day decide to move out of the island of a total population of 3.5 million through the years.

A.) *Early-Organized Labor Movement in Puerto Rico*

Before Puerto Rico became a commonwealth of the United States, the economy was based on agriculture and the island was under the Spanish colonial rule before 1898. During the years of 1800's and early 1900's protection or movements for labor legislation was nonexistent. The first early labor movement was brought up by a Spaniard named Santiago Iglesias. He joined forces in 1889 and wanted to transform labor, even before industrialization had arrived to Puerto Rico. The goal of his movement was to "abolish of the property-holdings, wage-paying system" (Galvin 1976). This meant that the first labor movement was to abolish the fear from the working class in dealing with the elites. However after Puerto Rico gain autonomy under US rule, and became a commonwealth, the press was pushed to criticize labor movements. Even the churches cautioned the workers to ignore those who spoke about labor rights (Galvin 1976). Worker's groups were being held back because if they initiate a movement, the higher officials will repress them. Puerto Ricans were seeing a bit prosperity; however, it was only limited to foreign investors coming in.

After the labor movement with Iglesias, a "semi feudal paternalism protecting the worker, gave way to an impersonal wage system" (Galvin 1976). The U.S Department of Labor study, in 1905, the present time labor conditions in Puerto Rico. They concluded that the social and economic position of the Puerto Rican worker is low, and their influence was extremely low. The courts of appeals in Puerto Rico began ruling against colonial injustices. This support from the legal system was, "the first time a legal mean was against labor exploitation" (Galvin 1976). In 1903, was the beginning of the campaign "Cruzada de la Ideal" which paved the way to the first official established union in Puerto Rico. This was the first success of the early labor movements in the Island, and was possible even after the US took over and made P.R a colony. Still there is

no record of official labor protection legislation at the time. Cleary shows the lack of security for the Puerto Rican workforce. The new movement in the United States was, “the concept of full-time, paid labor leadership is a custom which has flourished in the United States more than any other country” (Galvin 1976), influenced the early Puerto Rican labor movement. This moment brings the question of, how is a society who has been passed from one colonial rule to another be able to flourish in higher labor skills, out of poverty and be able to keep up with industrialized firms coming from foreign investors?

The Puerto Rican labor movement was always behind in developments because of their various colonial status. As it is seen, “Puerto Rico’s post World War II development strategy has always been about “industrialization first” (Rivera, Santiago 1996). It was very beneficial for foreign investors to get employees with greater skills from the outside. The Puerto Rican labor market, with not much of a strong labor legislation, were left stagnant in low skilled low paying jobs that most of the time resulted in exploitation from corporations. The political status of the island has since the beginning left the Puerto Ricans feeling crushed and at a disadvantage as they struggle in their employment and labor movements achievements. The economic disadvantage that was happening was because of the labor market in many sectors were unskilled workers, which makes them very easily replaceable. They also decided to stay back because that will makes things worse inside the colony of Puerto Rico and the government would not be in their favor.

B.) First and Second Labor Market Changes

The Puerto Rican economy was hit in 1920’s with highly unemployment rates and poverty. By 1940’s, the government initiated the first labor market reform called the “state capitalist development phase”, which was also the first failure of a “ran government-owned enterprises”

aimed for employment opportunity and achieve greater economic growth for the island (Rivera, Santiago 1996). However by 1947, “the average hourly wage for higher capital intensive industry was \$3.48, but workers in the labor intensive manufacturing were at a low of \$1.85” (Caban 1989). These reforms consisted in a socialist venture, which are government-financed corporations, however the government did not forecasted the technical problems in the project, and had many oppositions from businesses interest. Instead of the plan opening the doors for new employment and career growth, it led to internal corruption and a lack of interest in smart and big investment for prosperity. This led to the first recorded significant emigration wave of Puerto Ricans to the states and a very unbalanced labor market.

The second governmental attempt was the “Operation Bootstrap” from 1940 to 1960’s. Significantly changed the dynamics of labor market and laws, as well a significant crash in the labor market as a consequence (Caban 1989). First full movement to industrialize the island. The purpose of the Operation Bootstrap in the island’s economy was to create a sizeable and sustained infusion of private capital into the manufacturing sector and public corporations. It is important to center the original four features in the operation, which were going to help in growth and labor market expansion. Starting with having peaceful and transparency labor relations during the industrialization process. At time, this was a priority for the government to have a more positive and peaceful labor market to be attractive to foreign investments. However the first social impact was that it transformed a “low skilled, low-paid industrial working class” (Caban 1989). This process was not beneficial for the Puerto Rican labor market as the government's only purpose at that time was to promote only sustainable conditions that were highly in favor of external capital coming in from foreign investors. It is also important to mention the government wanted to promote an industrial development program with an industrial labor relations code. This colonial

arrangement was, “fortified by an ideology of develop mentalism that advanced the notion that social equity would be realized under a state-guided program of foreign-financed industrialization” (Caban 1989). In the meantime, the constitution of the commonwealth of Puerto Rico was being strengthening. Inside the constitution, it recognizes the right of workers to form and join unions. The first legislation recognizing the labor movement in favor of Puerto Rican is the “Ley de Relaciones del Trabajo” (Law of Labor Relations). The good side is that it gave the Puerto Ricans their union power; the downside is that the state reserved the legal authority to regulate industrial relations in order to maintain “peace”.

This was clearly a tactic from the government to give a small prosperity to Puerto Ricans to feel that one side of the aisle recognize them; however, the state has the legal authority to make changes in order to keep better relations with foreign investors. These legislations also included, “minimal safety standards and working conditions, compensation boards, health clinics, low cost housing, law against unjust dismissal, unemployment compensation, vocational training, and a range of social services” (Caban 1989). This was the first step from legislation to bring into modernization the Puerto Rican labor market. The new regulations benefited the workers, but who was benefiting the most was the state because this was an “American way” of doing this, which only attracted foreign investors.

The second feature in the operation were the changes made in the economy resulting from expansion on capital- intensive industrial sectors. This strategy, started in 1950, was based solely on the advantage that it will give a comparative advantage to the island’s production costs in compared to the mainland (Galvin 1976). This attraction was possible because of the repressing practice of lowering labor wages. The state did not only started to support lower wages to attract labor intensive firms but also wanted to give the investors a tax exempt “heaven”. In my position,

this directs solely the attention to the state increasing relationships with the U.S by solely establishing business relationship at the expense of providing a stagnant salary for the Puerto Rican society. However, the Fair Labor Standard Act was established in 1938, resulting in Puerto Ricans having a federal minimum wage as well. This minimum wage was not enough for companies to keep investing so most of them decided to leave for other international economies that were offering lower wages (Caban 1989). The local government did not passed legislation or made amendments to the current law that will directly benefit the Puerto Rican workforce. An example was a wage of \$3.48 for higher capital-intensive workers and \$1.85 for the rest of the Puerto Rican labor force. Still the new industrialization efforts in the island were giving wage rates substantially lower than workers in the metropolitan area, and the labor market of Puerto Ricans was still earning less than any other higher foreign skilled workers in the same districts. Even though the state wanted to promote a more diverse economy, the Puerto Rican labor market was at a disadvantage since the start. This is an example of how the state sought to better increase U.S relations than to strengthening their own Puerto Rican workers. This is highly stressful for a community under colonial rule.

The third feature “Operation Bootstrap”, “gave to the Puerto Rican community were negative results in state management” (Caban 1989). This was resulting in a declining low income going to the Puerto Rican sector, while the corporations generated huge profits for external capital. While workers were left last as a priority for the state, in the 1970’s, Puerto Rico gained an attractiveness as a lucrative investment site. This incensement in capital did not benefit the growth of local market forces. This cycle will contribute to the later on snowball effect that produced the fiscal crisis in the island. Under the new industrial order the, “private sector wage policy was revised since labor costs were a relative small part of the final costs of the finished product. These

low wages open the door for the high need of families relying on food stamps. The island began to suffer, “from discouraged-worker syndrome with lack of new job opportunities eventually leading unemployed workers to withdraw from the labor force altogether” (Francisco, Santiago 1996). These programs were federal programs, which we will see later on the effect on the labor force in Puerto Rico in the present.

The growth of the state-labor relations opens the line for the fourth feature inside the Operation Bootstrap, the changes in the state-labor relations. The new Puerto Rican that came into power at the 1970s, was the Party of New Progressives (PNP). This political party was directed by Luis Ferre, “who was the first leader in the country to be most influential to the capitalist class and wanted harmonious industry relations” (Caban 1989). This administration was found guilty in failing to comply with legal sanctions to compel unions to engage management in negotiations in order to resolve the labor problems, then again proving the lack of support of workers in the island. This produced a loss in employment opportunities.

The administration sought for some remedies that the author Caban names as follows: increased public sector employment, expand benefits for workers, facilitating union formation, support federal minimum wage legislation and adopting a more flexibility in the local minimum wage negotiations. It is critical to mention that in this era, the Commonwealth of Puerto Rico recognized the rights of the workers and unions in the private sector, but did not recognize such rights in the public sector yet. The state efforts to promote the social equality seemed like such a small step in comparison to their efforts and achievements obtained in transforming Puerto Rico attractive enough to more foreign investors. These were the years when Puerto Rican communities struck the most in the community; the oppression was ongoing and stressful. The Puerto Rican workforce was disintegrating at the expense of the American tax haven.

C.) Changes to Puerto Rican Employment Law

& Fair Labor Standards Act Controversies

As history tell us, the labor in Puerto Rico is highly regulated as well as federal US laws apply to the island as well. The first main statue in the history was introduced in 1976, after Operation Bootstrap, was Act No. 80, the Unjust Dismissal Act (OSLPR). The Act No. 80 has been constantly modified in what the state says to support the economy. These changes has driven the Puerto Rican workforce into feeling manipulated every time there is a fiscal problem they result in making “modifications” to laws and regulations that support them. It was not until 2017 the governor introduced these changes to the Island. After 40 years, the most significant amendment to the Puerto Rican workforce ever since was compounded in what is called the Labor Transformation and Flexibility Act (Mendez & Alvarez LLC). As reported, the changes to the act covered modifications for better tax opportunities for enterprises and flexibility for Puerto Rico employment landscape. All these amendments come from Puerto Rico’s duty in repaying their 120 billion debt financial crisis. These decisions comes after Puerto Rico’s inability to declare bankruptcy because of the island’s commonwealth status.

It is important to remember that the journey for the island’s financial recovery has been a long and a collaborative work between the United States and Puerto Rico. In 2016, President Obama established the Puerto Rico Oversight, Management and Economic Stability Act, also known as PROMESA or the Oversight board. The purpose was to create, “federal actions that could address the factors that contributed to Puerto Rico’s financial condition and levels of debt. Consistent with PROMESA, we focused on actions that would not increase the federal deficit (USGAO). The Labor Transformation and Flexibility Act (Act 4) was introduced as a mandated

plan for the Oversight Board and the government needed to approve it. The Act 4 includes changes to the Unjust Dismissal Act, Christmas Bonus, Overtime, Closing Law, Vacation and Sick Leaves, Participation in Religious Services, Discrimination in Employment, Employment Contracts, and Unemployment Benefits (LTFA 2017). These changes were made by the PROMESA committee and the government to make the island more attractive to employers in order to stimulate the economy. Once again, the Puerto Rican workforce is being set under new amendments in order to help the state repay the state's financial deficit.

The changes reflected in each section, affect particularly young workers in the island and the country will go through a significant change in policies and regulations, which is currently producing a tense work environment in the island. As reported in the Puerto Rico Labor and Employment alert, under the Unjust Dismissal act the statute of limitations was reduced from 3 to 1 years for claims filed. The salary for unjust dismissal used to cover indemnity with no cap for their paid salary, new employees will have a cap of an equivalent of a 9-month salary under the new Unjust Dismissal Act. The probationary period for employees hired was increased from 6 months to 9 months, as well as now temporary employment up to 3 years will not qualify under the Unjust Dismissal Act. The second amendment that the community has been extremely frustrated with is the changes to the Christmas bonus. The required hours for Christmas bonus was increased by 1,350 hours more than usual for new employees, and the bonus will only be 2% of their salary. They also mandated that other bonuses paid during the year might be credited to reduce the Christmas bonus. The third section they have amendment is the overtime and closing law. The rate for overtime was reduced from double to time and a half for overtime hours only for new employees. Sunday is no longer overtime if it stays under 8 hours, and no special compensation has to be paid to new employees for work on Sunday.

The fourth issue at hand is that now new employees accrue vacation leave at a rate of half a day per month worked, and now all employees need to work at least 130 hours in a month to accumulate vacation or sick leave. As well as the statute of limitations for a salary claim was reduced from three to 1 years. On a good note, employers are now mandated to make reasonable accommodation for religious practices without undue hardship. However, the act now limits the punitive damages payment by half the original amount for employment discrimination. The seventh amendment was under employment contracts, where the statute of limitations was substantially reduced from 15 to 1 year for claims for new employees. The final changes were in the unemployment benefits where new employees after the act is effective will receive higher unemployment benefits and the insurance rates will be increased for the company accordingly.

It is important to mention that inside all the changes that are happening one legislation that was recently brought by the Oversight Board and the governor had the obligation to sign was the new “At-will employment” in Puerto Rico. According to the comprehensive source of legal updates, Lexology, overturn an act that provided significant protection to Puerto Rican employees. Under the previously discussed Act No. 80, an employee cannot be terminated without just cause. According to the office of legislative services of Puerto Rico, if an employer violates the Act, the company is liable for up to two weeks of pay based on the employee’s highest recent salary for each year of service completed, potentially leading to a large statutory award. In an island where jobs are being underpaid and people can be easily be out of jobs because of the lack of it, this measure just makes the working conditions in the island more unstable. Once again, the rights of the workers in the island have been demoralized for the better of business profitability has and attract foreign investors.

The newest controversy is in the Labor Transformation and Flexibility Act is that from now on new employees, usually the younger population, will be the ones dealing with the so non-advantageous system in place. The purpose of this was to, “create an avenue for public corporations to restructure the state’s debt” (Sanchez 2017). It is also reported that under PROMESA/Oversight Board amendments to the new labor reform, the governor may allow for a period of 5 years where an employee can pay a minimum wage of \$4.25 the hours for employees under 25 years old or younger. I agree with Sanchez and the Hofstra Law review, in which they argue that the provisions are flawed in believing that it will increase labor participation instead they are provoking a rise in migration to the United States. These new implementation under the Labor Transformation and Flexibility Act are not encouraging but rather create a confusing political atmosphere where Puerto Ricans do not know where the government stands with the Puerto Rican workforce.

The Fair Labor Standards Act of 1938, enacted by Congress, allows for the Oversight Board in Puerto Rico to allow such plans to happen. Even if the proposed strategy of a minimum wage of \$4.25 is not close to been approve, in 1940 Congress enacted special legislation that allowed for special committees in United States Territories to set lower minimum wage by industries in such places like Puerto Rico (FLSA 2013). Is this sufficient evidence that in the history of the United States, Puerto Rico has been allowed to fall through the cracks of a colonial ruling, especially our workforce? This has been the most current controversial topic inside the PROMESA bill that the Oversight Board is trying to incorporate. Recent news channel, the Huffpost says that, “the side effects for young workers are more than we can think of, it represents the postponement of economic independence for young adults and in many cases limits better and stable capabilities to contribute economically to a household” (Davila 2019). The last time hourly

wages were this low was before the 1990's, is there ever going to be a chance for the Puerto Rican community to be treated as equal citizens of the United States. The mainland is using their external supremacy to get their money back and that is it. The Oversight Board and PROMESA does not take into real account the people of Puerto Rico.

PROMESA was enacted to assist Puerto Rico in its overwhelming debt. These measures seemed overboard and the board still believes are adequate, however nothing in the PROMESA legislation for minimum wage indicates how it will actually benefit the economy as a whole. Lugo-Sanchez, as a lawyer activist for Puerto Rico from New York argued the legal consequences in her scholarly publication "*Do Amendments to the Fair Labor Standards Act as Applied to Puerto Rico Implicitly Encourage Employers to Benefit at the Expense of Young Workers?*" She represents the sentiments of Puerto Ricans when talking about PROMESA, why is not really anyone looking after the people. I support her arguments in describing that the outrageous new minimum wage will first trigger displacements of older employees, which can ultimately result in age discrimination. I will also add that this minimum wage of \$4.25 will continue to place more people at an economic disadvantage where almost 40% of the population lives under the poverty line. Luckily, there is tremendous opposition to PROMESA in the island, even the governor is giving them a battle, and they will be pushed to reconsider.

What is the future for the Puerto Rican labor market? There has always been an external power controlling the Puerto Rican workforce. Starting with colonization in 1493 until now the recent fiscal crisis for debt that has been accumulated over decades. Is there common ground for protection and real encouragement for workers to not only stay in the island but also have a stable and viable income for higher living conditions? It seems that every time the island is looking for

way to make more money comes at the expense of manipulating the Puerto Rican workforce. The Puerto Rican market has changed dramatically over the last 50 years, bringing high regulations, lower employment protection, and no economic stimulus for making Puerto Rican professionals and the significant work force stay to invest in the island. Currently, standard living necessities are more expensive in the island than in the mainland, more than 200 people are choosing to move outside for better living conditions each day, and the pressure in the working class has been increasing.

The government is for the people and by the people, and it seems that not only have we been giving the treatment of second class citizens but our own government has been investing more in strategies to please outsiders rather than working for its people. The island possess incredible talent and the society is so resilient over every adversary coming, but enough is enough. The change needs to be for the people and an economy will never grow when its main legislations and bills is to repay a debt of more than 100 billion dollars. I decided to research on the economic conditions and political status of the island that have made long lasting effects in the labor force and market of Puerto Rico. Besides the lack of research out there, it is important to remember that for the future of Puerto Rico to be better, mistakes from the past cannot happen again and the need for better legislation is crucial. Our new leaders should always learn from history and not keep making the same mistakes. The island needs to retain its people, and give them a platform and a plan for true long lasting economic prosperity for Puerto Ricans.

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