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on Latino Politics & Policy



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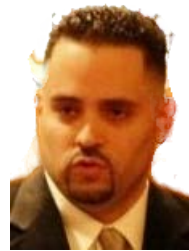
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Guest Commentary

The Puerto Rico Debt Crisis: Why Congress is Responsible

By Nelson Torres-Ríos (August 4, 2015)

Puerto Rico, *la Isla del Encanto*, is in serious trouble. For decades, Puerto Rico was showcased by the United States as a successful experiment of capitalism vis-à-vis socialism during the Cold War. In 1952, the island was offered Commonwealth status as the only option in the United States' effort to remove Puerto Rico from the United Nations' list of territories that lacked self-government.



For years, Puerto Rico enjoyed the highest per capita income in all of Latin America. The island's economy, when compared to other Latin American neighbors, was relatively strong, which prompted an influx of immigrants from Caribbean neighbors. However, like all relationships that are built on ambiguity and opportunism, the symptoms of a U.S. occupation and territorial status have manifested and have become the signifiers of an urgent need for change.

In the early 2000s, the U.S. Navy's bombing in Vieques was the uniting issue for *puertorriqueños*. Puerto Ricans from all over the world protested and finally achieved the Navy's withdrawal from Vieques. The United States, to conceal the fact that Viequesens overwhelmingly wanted to oust the Navy, cancelled a referendum that would have clearly indicated that the Navy had to leave. Sila María Calderón, our first female governor, decided to run her own plebiscite, what we call in Puerto Rico, "plebiscito criollo" that made headlines all over the world. Nearly 70% of *Viequesenses* favored the Navy's withdrawal and by 2003, the Navy was gone. Undoubtedly, Puerto Rico's problems have always been a direct result of a relationship that for years the Puerto Rican electorate has attempted to modify.

The Politics of the Plebiscite

In 1967, 1993, 1998, and 2012, Puerto Ricans went to the polls and requested a modification of the current territorial status to one that would remove the island from the Territorial Clause, whether as an Enhanced Commonwealth that resembles Free Association, Independence, or Statehood. Congress has NEVER responded to the will of the Puerto Rican people.

Today, the island has a debt of over 70 billion dollars and Governor García-Padilla has clearly stated that the debt cannot be paid. Why is this an American problem? How did we get here?

Since the U.S. invasion in 1898, Congress has never asked the Puerto Rican people

how they want to resolve the status issue. By 1898, the U.S. had already decided that the territories to be acquired were to be held indefinitely and governed by Congress. The Supreme Court in its 1901 decision of *Downes v. Bidwell* held that Puerto Rico is a territory of the U.S. appurtenant to but not a part of the United States.

The Jones Act Restrictions

During the early twentieth century, very meticulously, Congress began to shape the way Puerto Rico would be governed. Puerto Rico is subject to the U.S. Commerce and Territorial Clauses and, as such, is restricted in how it can engage with other nations. The Jones Act of 1917 made Puerto Ricans U.S. citizens just in time to serve in World War I, while the Merchant Marine Act of 1920 (P.L. 66-261), also known as the Jones Act, prevents foreign-flagged ships from carrying cargo between two United States ports (a system called cabotage). In plain language, this means that foreign ships with goods from other nations cannot stop in Puerto Rico. Instead, they must proceed directly to U.S. ports, to transfer the goods to U.S. ships and then send them to Puerto Rico. This translates into exceedingly high prices of goods sold on the island to cover these costs.

Additionally Puerto Rico, unlike states, can also issue bonds exempt from federal, state, and local taxes, making it a very attractive bond haven. This was all possible because Congress authorized it. However, Congress did not include Puerto Rico as eligible for Chapter 9 bankruptcy and seems unwilling to do so today. To exacerbate the problem, under Puerto Rico's Constitution, bondholders must be paid before the government pays anyone else. As such, the current situation in Puerto Rico, if Congress fails to act, only benefits the millionaires and the hedge funds that are in line waiting to be paid. *Y los Boricuas que se jodan...*

How has Puerto Rico responded? In its efforts to improve the island's economy, Puerto Rico has requested numerous times to be excluded from the Jones Act restrictions. To minimize and restructure the impact of the debt, Puerto Rico has increased taxes and cut local spending, but soon realized that those efforts were insufficient. Gov. García-Padilla finally admitted that the debt cannot be paid and may have committed political suicide by doing so. His proactive approach to this problem, however, is what a true leader more concerned for the future of his people does. Someone had to face Congress and shift a portion of the burden on those that have contributed to the evolution of this fiscal crisis. Congress has ruled over this island for over a century and has left it without any economic tools or incentives to allow its economy to prosper. Puerto Rico's hands are tied.

The Role of Section 936

Perhaps the biggest contributor to the economic crisis was the expiration of section 936 of the U.S. Internal Revenue Code which applied to Puerto Rico. This section provided tax exemptions for U.S. corporations that settled in Puerto Rico. Between 2001 and 2012, Puerto Rico's debt skyrocketed from 25 billion to nearly 73 billion. Many point to 1996 as the year that this snowball effect of debt began to develop, as it was decided that 936 would be phased out.

The Rossello administration (1993-2000) of the New Progressive Party, which favors statehood, expanded the debt to finance projects such as the building of one of the most expensive mass transit systems in the world, and a new health care system, without taking into account the effects of the phasing out of 936

incentive. Many in the island welcomed this apparent sudden boom in infrastructure. Moreover, the statehood party believed that statehood was lurking in the background, despite that many of Rossello's cabinet members, such as Victor Fajardo, were in federal prison for fraud and misallocation of funds. The two plebiscites held in 1993 and 1998, however, clearly indicated that a majority of Puerto Ricans were not interested in statehood.

Unfortunately, the Rossello Administration did very little to combat the elimination of Section 936 of the U.S. Internal Revenue Code. In 1993, the press reported the following:

Mr. Rossello himself has been less than enthusiastic in defending the program. Both he and the island's current representative in Washington, former Gov. Carlos Romero Barcelo, were conspicuously absent from a recent pro-936 demonstration in San Juan that attracted 100,000 people.

Section 936 brought thousands of jobs to the island. The whole economy of the island was dependent on this incentive. Once the incentive was gone, so were many jobs and many companies that chose to relocate to other Latin American nations. Moreover, Congress failed to put in place an economic plan to offset the effects of 936 on the island, nor was it pressured by the Puerto Rican government to do so. Unfortunately, under territorial status, Puerto Rico lacks any significant political power to attract investments; the island is subject to Congressional action first.

Elimination of 936 a Statehood Gambit

With this background, one would then ask why did the Rossello Administration not do more to protect and advocate for Section 936? The answer is quite simple. Section 936 is not available to states. Advocating for economic incentives that would fortify the Puerto Rican economy and secure jobs under the current Commonwealth status would translate into less votes for statehood. The logic was that a spiraling downward economy, devastating job loss, and the island being forced to borrow money to pay its debt, would turn into a massive support for statehood. By destroying Commonwealth, so they reasoned, statehood would arrive on the express train.

Even if you argue that statehood won in 2012, which it did not, who in Congress wants a state with so much debt? With a \$73 billion debt, the likelihood of statehood is slowly dissipating. Like Vieques, the current situation in Puerto Rico is a symptom of the cancer like side effects of colonial status. The island's lack of sovereignty, political and economic tools have conspired to raise the fundamental constitutional question: Where does Congress get the power to hold a territory of American citizens indefinitely without a detailed plan for self-government and democracy? Sooner or later, Congress will have to face its own demons and the people of Puerto Rico. The time has come. Most of us are here now and we vote. We are going to remember who opposed Chapter 9 for Puerto Rico *y vamos a limpiar la casa*.

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