



PUERTO RICO FORWARD

Episode 20: Puerto Rico and the Vote for President

Transcript

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As the upcoming US presidential elections approach, each person running for president will be forced to expose themselves to various questions and demands related to issues that are of importance for the general population. These issues vary because they respond to a wide variety of communities, each with its own interests and objectives. For example, the LGBTQ community will generally be interested in testing a candidate's disposition to fight discrimination based on sexual orientation or gender identity. Other communities might be more focused on other issues, such as gun control policies, access to free education, climate change, access to health care, global trade policies, police brutality, mass shootings, Civil Rights reform, the list is basically endless.

Each one of these groups, having one or more interests at its core, would seek to support a candidate that is knowledgeable and shows interest in said issues. As a result, if a candidate shows little interest, or adopts policies that run against these issues, the community that holds them dear wouldn't be expected to support such a candidate.

If we look at this situation from the vantage point of the candidates, depending on their visibility and ability to influence the public discourse, these groups could be a determining factor in their race for president. This then usually pushes each candidate to at least attempt to appease the different pressure groups that, in exchange of the candidate's desired stance on an issue of importance, would mobilize their respective voting blocks to support said candidate.

Now, what I'm describing here should not surprise anyone. Each election year, we see all kinds of townhall meetings hosted by the presidential hopefuls in places, and even with certain groups, that represent a key voting block for that candidate. The influence of these groups is further enhanced if they engage in lobbying activity in Congress. However, the reason these groups have the ability to place pressure on the various candidates for president is mostly due to a simple fact that is often taken for granted. **Their constituents can vote.** To have an idea of how vital this power is in shaping US politics, consider how difficult and lengthy the different suffrage movements have been. Allowing for a disenfranchised segment of the population to vote is to court major changes in the political landscape. One only needs

to consider how drastically different US politics would be if women had never gained the right to vote.

As the ability to vote has become commonplace, its importance has been, for the most part, overlooked or taken for granted. However, there is at least one glaring void in the “inclusive” landscape of the US voting population: the US Citizens living in Puerto Rico (hereinafter PR).

As you all know by now, PR is a US colony and Congress has complete control over the archipelago through the use of its plenary powers as described in the US Constitution’s Territorial Clause. The US Supreme Court has determined (in a series of cases commonly known as the Insular Cases) that PR is a **non-incorporated US territory**. As a result, the court basically reached the conclusion that **PR belongs to but, is not a part of, the US**.¹ Also, as we’ve discussed before on this podcast, people born in PR have US **Citizenship** by virtue of the Jones-Shafroth Act, signed into law by President Woodrow Wilson on March 2nd, 1917.

Such a bizarre and undemocratic legal reality has yielded a very strange result: Although PR is, legally speaking, a “thing” that belongs to the US, it is not a part of the US. However, the archipelago’s residents in fact have US citizenship since birth. Nevertheless, this citizenship, when compared the that of a person living in one of the 50 states of the union, is of second class nature. One of the main reasons this is true is the fact that **US citizens that reside in PR cannot vote in presidential elections, or in any federal elections for that matter**.² Of course, this issue is not new and has been a central contention between the different political groups in PR. However, the same cannot be said about the political discourse in the US. This issue, for the most part, has largely gone unmentioned in the presidential debates and is mostly ignored in the candidate’s political platform. That said, this was not always so.

One of the few moments in which Congress took a real interest in the subject of extending the vote for president to PR residents began in the 1960’s and culminated in the 1970’s with the continuation of a policy of Puerto Rican disenfranchisement. Our discussion begins with Section 1 of the 23rd Amendment of the US Constitution. The text reads as follows:

The District constituting the seat of Government of the United States shall appoint in such a manner as the Congress may direct: A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors

¹ See Downes v. Bidwell, 182 U.S. 244 (1901)

² It is important to point out that the people of PR can in fact vote in the primary elections to chose each major party’s presidential candidate.

appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.³

Put simply, the result of this Amendment was that the residents of Washington DC (hereinafter DC) were recognized the right to vote for the US President and Vice President **despite the fact that DC is not a state**. As a result, DC is the **ONLY** non-state whose residents are endowed with the right to vote.

Said Amendment's ratification occurred on March 29th, 1961 and its approval served as the perfect platform upon which to discuss extending the same voting rights to the people of PR.

In a report published on August 18th, 1971 by the Ad Hoc Advisory Group on the Presidential Vote for Puerto Rico (hereinafter Ad Hoc Group), aptly titled *The Presidential Vote for Puerto Rico* (hereinafter Ad Hoc Report), said group provides a general overview of the events that led to its creation.

In April 1960 Governor Muñoz Marin testified before the subcommittee on Constitutional Amendments of the US Senate Judiciary Committee public hearings on the length of the District of Columbia. He argued that citizens of the United States, resident in Puerto Rico, be granted the right to vote for President and Vice President. This plea was not heeded and the Commonwealth of Puerto Rico was not included in the 23d Amendment to the Constitution of the United States when it was approved in 1961.⁴

As we can see, although allowing PR to participate in the presidential elections was a main issue for political leaders on the archipelago, the feeling was not shared by politicians within the Beltway. Nonetheless, Boricua legislators seem to have not been dissuaded by this reality because on December 3rd, 1962 they approved *Joint Resolution No. 1*; which seemed to have attempted to pressure Congress to take action on the subject of PR's status. The Ad Hoc Report mentions this as well:

Joint Resolution No.1 of the Legislative Assembly of the Commonwealth of Puerto Rico (Dec. 3, 1962), approved with the support of both the then major parties, read: "To propose to the Congress of the United States the procedure for establishing the ulterior final political status of the people of Puerto Rico." [...] The Proposal of joint resolution number one was considered by Congress in 1963. On May 16th 17th of that year, the Subcommittee on Territorial and Insular Affairs of the House of Representatives held public hearings on the matter. The

³ U.S. Const. amend. XXIII, § 1.

⁴ Ad Hoc Advisory Group on the Presidential Vote for Puerto Rico, *The Presidential Vote for Puerto Rico 2* (1971) [Hereinafter *Ad Hoc Report*]

Puerto Rico proposal for a status plebiscite, however, was amended to become a proposal to study the status.⁵

Eventually, Congress would finally react, albeit pusillanimously, by approving Public Law 88-271 on February 20th, 1964. Again, we quote the Ad Hoc Group:

This legislation provided for the establishment of the United States-Puerto Rico Commission on the status of Puerto Rico (the Status Commission) to “study all factors which may have a bearing on the present and future relationship between the United States and Puerto Rico.” The Status Commission issued its report in 1966, proposing a plebiscite on the status of Puerto Rico.⁶

So, instead of providing a process for PR to finally move out of a colonial frame of existence, Congress creates a so called “Status Commission” (hereinafter Commission) and chartered it with reviewing PR’s colonial relationship with the US. Once created, the Commission took about two years before it finally published a report (hereinafter the Commission Report) on the PR issue in 1966. Among other things, the Commission provides the following advise:

If the people of Puerto Rico should maintain their desire for the further growth of the commonwealth along the lines of the Commonwealth Legislative Assemblies’ Resolution No.1 of December 3rd, 1962, or through other means that may be conducive to Commonwealth [sic] growth, a joint Advisory Group or groups should be convened to consider these proposals.⁷

The Ad Hoc Report goes on to state that the Commission also stated that such an Advisory Group should be composed of members appointed by the US President as well as the Governor of PR.⁸ The Commission went even further and stated that “[e]ach joint Advisory Group would report its conclusions and recommendations to the President and Congress of the United States and to the Governor and Legislative Assembly of Puerto Rico. The membership of each Advisory Group would be determined by the nature of the particular problem under consideration.”⁹ At this point, the Commission Report begins a simple review of the plebiscite that took place in 1967. In doing so, it describes a written exchange between then Governor of PR Roberto Sanchez Vilella and President Lyndon B. Johnson. In his letter to President Johnson, Governor Sanchez Vilella proposed “the establishment from time to time of Ad Hoc joint groups to recommend such measures as in their judgment shall promote the development of full self-Government and the creation of a more perfect union between the United States and Puerto Rico.”¹⁰ The Ad Hoc Report states that President Johnson replied the very next day stating that he stood “ready to appoint the US members of such group or

⁵ *Id.*

⁶ Ad Hoc Report, *Supra* note IV at 3

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Ad Hoc Report, *Supra* note IV at 4

groups whenever the Commonwealth of Puerto Rico may be ready to appoint the Commonwealth members.”¹¹

Unfortunately, it wasn't until the year 1968 that the local authorities made an effort to create the Ad Hoc Group President Johnson and Governor Sanchez Vilella had agreed to create. By this time, both PR and the US had new leaders in their respective executive branches: Luis A. Ferré was the new Governor and Richard Nixon was President at the time. Finally, in 1970, the aforementioned *Ad Hoc Advisory Group on the Presidential Vote for Puerto Rico* was appointed¹² and began tackling their task.

Now, to be clear, the Ad Hoc Group did in fact support the extension of the right to vote in presidential elections to the residents of PR who were US citizens. One of the first arguments said group offered is firmly rooted in the political and legal tradition of citizenship: “In our democratic system, the right, accompanied by the obligation to vote, is the first and perhaps the most important right and obligation of citizenship. It is a citizen's principal means of achieving and defending his rights and privileges.”¹³ Of course, that's not the only rationale offered in support of their conclusion.

The proposal to extend the right to vote would be beneficial not only to the governments of the United States and Puerto Rico, but to citizens as individuals. First, it is fundamentally important to democratic governments to have as many competent citizens as possible participating in electoral decision; second, it is equally important that the individual have the vote that may achieve and protect his basic rights as a citizen.¹⁴

The Ad Hoc Group goes on to further affirm the following:

It is incomprehensible that the development of Commonwealth can be construed to mean only an expansion of authority over local affairs, that expansion sometimes equivocally phrased as a transfer of federal powers to the Commonwealth. Since it is obvious that some or even many powers of the permanent union will remain Federal and must remain Federal, “self-government” where these powers are involved, requires also a share in the choice of and the Judgment of the President and Vice President of the United States who exercise power virtually affecting the people of Puerto Rico.¹⁵

At this point, the Ad Hoc Group seems to be arguing in favor of Puerto Rican enfranchisement, while at the same time defending US imperialism. In other words, for the Ad Hoc Group, allowing US Citizens that live in PR the right to vote in federal elections, does not

¹¹ *Id.*

¹² Ad Hoc Report, *Supra* note IV at 5

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

by itself imply a loosening of the US's grip over the archipelago. This logic seems to escape most people when they consider this particular subject within the PR issue.

You see, as long as you can keep PR within the confines of the concept of "unincorporated territory", Congress will continue to have plenary powers over the archipelago. Even with the power to vote for President and Vice President, residents of PR will continue to live in a colony of the US. The only way to change this is by Congress recognizing the archipelago's sovereignty, thus recognizing its independence; or by declaring it the 51st state of the Union. Outside of those two scenarios, no amount of "self-government" or "citizen rights" will free PR from its colonial bonds; which begs the question: why press the matter in the first place? Answer: **POLITICS**.

Without a doubt, the ability to vote is one that carries with it a mix of issues. Particularly in the US, where poor people, women, and former slaves have had to fight to attain access to the ballot box. Whenever a new segment of the population has demanded enfranchisement, an entire political debate swells up around the plea. The debates have never been limited to the simple act of voting, but rather always expand to broader issues of prejudice. Inevitably, at least two bands will form: those who oppose it and those who favor it. Presuming the subject is relevant enough to be of political importance, speakers of opposing opinions will attempt to vanquish one another. In doing so, PR's colonial status would become inescapably present in the debate. That alone, in my opinion, is enough to make such a debate worthwhile.

Of course, as I mentioned before, we must not fool ourselves into thinking that the right to vote changes PR's colonial condition. Instead, we must be aware of the fact that such a development would be a strategic move in pushing the PR issue into the political limelight. This would be, above all, a platform upon which to discuss the PR issue.

Now, going back to the Ad Hoc Report, it is in fact quite possible that some of the issues highlighted in it would become points of contention once again. In particular, two points of contention seem to have maintained their relevance throughout the years. First, whether or not Puerto Ricans should be able to vote even though we do not pay all taxes paid by those who live in a State; and second, the possibility that allowing Puerto Ricans to vote would be considered a step in the direction of statehood as a status resolution.

In regards to the first point, the Ad Hoc Group makes quick work of it.

The justice of granting the right to vote for president and vice president to US citizens residing in Puerto Rico rests upon citizenship and the other factors cited in this report. The 24th Amendment to the US Constitution removed the barrier of the poll or any other taxes as a requirement to vote. The Supreme Court of the United States in the case of *Harper vs Virginia Board of Elections*, decided in 1966 that a Virginia poll tax violated the 14th amendment by making the affluence of the voter or payment of any fee an electoral standard. The court

said: “Voter qualifications have no relation to wealth nor to paying or not paying these or any other taxes.”¹⁶ (*citations omitted*)

As we can observe, both the constitution and judicial precedent are squarely opposed to any attempt to at requiring payment of any tax in order to exercise the right to vote. As a result, using the fact that US Citizens in PR do not pay the same taxes as those living in a state to argue against Puerto Rican enfranchisement would be academic, but most importantly, unconstitutional.

Moving on to the next point, the Ad Hoc Group offers a less thorough analysis. While reviewing the hearing held on the subject of Puerto Rican enfranchisement, said group states the following:

We heard testimony that the presidential vote would cause Puerto Rico to become an incorporated territory. The Commonwealth of Puerto Rico is a duly constituted, existing political entity. It is defined by its constitution, the Federal Relations Act, its laws and precedents, and those of the union with which it is permanently Associated. The status of the Commonwealth is of a different nature from that of an incorporated territory and in some aspects of self-government it is more advanced. The distinction of the unincorporated territory was made after the Spanish-American war of 1898 when the United States found itself with territories deferring in nature from those of the empty western lands of the 19th century which later became States of the Union. The Federal Government could not then decide whether to rule the people of the new territories as subject, as in the case of the Philippine Islands, or to make them citizens waiting statehood, as in the case of Alaska and Hawaii. Many Congresses repeatedly postponed action on all these matters until agreement with virtually unanimous. The issues of statehood, Federal Taxes, and the presidential vote for Puerto Ricans are separate question which Puerto Rico and the United States will determine over the years on the merits of each question.¹⁷

It seems that the superficial discussion of such an important and relevant subject by the Ad Hoc Group is a testimony to the explosive potential of the status issue. I believe that sidestepping the statehood question would be a strategy employed in modern times for the same reason. PR statehood is a thorny subject due to all the implications it carries with it. Whether we're talking about cultural or racial issues, absorbing the archipelago as the US's 51st state would have deep political implications; and if you ask me, that's a good thing. Let me explain.

Statehood is one of, if not the most supported status options for PR. A great deal of the population within the archipelago favors it. Whether one favors statehood or independence,

¹⁶ Ad Hoc Report, *Supra* note IV at 8-9

¹⁷ Ad Hoc Report, *Supra* note IV at 9

it's not hard to understand how beneficial it would be for either camp to determine statehood's real viability. You see, for all its support in PR, the option has raised very little concern in the US. The absence of a clear policy, or at least a general consensus among the US polity, functions as a hindrance in PR's status debate. An adequate status debate is not possible without the participation of the stateside electorate. Why? Well, put simply, although many special interest groups have developed a strong grip on what does and doesn't get through Congress, the members of said body still rely on being voted in by the US electorate. As a result, public opinion is a vital part in attracting or repelling votes in favor or against any candidate. If an issue is not politically relevant, as is the case of PR's status, Congresspeople have no real reason to take a stance on it. The real world result of this lack of interest by lawmakers is 120 years of colonial subjugation. This must change.

If the Puerto Rican enfranchisement issue gains political relevance, congresspeople would be forced to weigh in on the subject. Perhaps most importantly, the broader issue of PR's status would be unavoidably discussed due to the high probability of the presidential vote being perceived as a step in the direction of statehood. In effect, the enfranchisement question would, by the very nature of the PR issue, be a sort of Trojan Horse for the status debate.

As we've mentioned before, solving PR's status problem is a vital and central step for the archipelago to be able to gestate a long term plan of economic and social development. Otherwise, it will continue to be a colonial property of the US and be at the mercy of Congress and the special interest groups that rule it. Unfortunately, although the status issue is a hotly debated subject in PR, it has proven to be of little importance for the US population. I see no reason for this to change given the fact that PR's permanence as a US territory isn't something that has an impact on the daily lives of the US electorate. The PR issue, **by itself**, is unfortunately a fringe issue that only gets airtime once in a while, and most of the time said attention is short and superficial. However, bring into the arena the idea of over three million Puerto Ricans having the ability to play a key role in determining who gets to be the leader of the "free world", and now you've caught their attention.

As I mentioned earlier, the right to vote is one that has always ruffled feathers. By pushing the issue of giving Boricuas in the archipelago access to the presidential ballot box, we'll be touching a very active and historically sensitive nerve for US society. Also, since voting rights are so close to the US's historical identity, the majority of the US electorate will feel a strong connection with the debate. As a result, even people that have no stake in the matter would feel attracted to the discussion, and the more important the subject is for the electorate, the more compelled politicians will be to pick a side, thus giving the PR issue more and more political relevance.

Solving the PR issue will take more than highlighting its moral undertones. It must become a politically relevant one for the US population. I believe that pushing the Puerto Rican enfranchisement debate is a viable and actionable way to bring the archipelago's colonial suffering to a much needed and desired end.