

**GAO**

Fact Sheet for the Chairman,  
Committee on Energy and Natural  
Resources, U.S. Senate

August 1989

# PUERTO RICO

## Update of Selected Information Contained in a 1981 GAO Report



**Human Resources Division**

B-234765

August 9, 1989

The Honorable J. Bennett Johnston  
Chairman, Committee on Energy and  
Natural Resources  
United States Senate

Dear Mr. Chairman:

This report responds to your February 1989 request that we selectively update descriptive information contained in our 1981 report, Puerto Rico's Political Future: A Divisive Issue With Many Dimensions (GGD-81-48). That report examined the historical, political, and economic evolution of Puerto Rico and assessed the potential effects of changes in political status from the existing commonwealth to an enhanced commonwealth, statehood, or independence.

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**Background**

Puerto Rico was ceded to the United States by Spain in 1898 and administered as a territory. In 1952, the island became a commonwealth with greater self-government but the issue of political status—statehood, independence, or enhanced commonwealth—remains a central focus of Puerto Rican politics.

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**Puerto Rico's Status Before  
the United Nations**

Before 1952, the United States submitted information on Puerto Rico's economic, social, and educational conditions to the United Nations, which required nations to submit this information if they administered territories where people had not yet attained self-government. In 1953, however, the United States informed the United Nations that it would cease reporting such information on the grounds that the Puerto Rican government was largely autonomous as a result of its commonwealth status. Since that time, however, the United Nations Decolonization Committee has urged the United States to take all necessary measures to transfer total sovereignty to Puerto Rico.

The United States, however, has maintained that a 1953 U.N. resolution, which recognized that Puerto Rico had exercised its right to sovereignty, leaves the United Nations with no jurisdiction in the matter. Recently, a resolution was passed in the United Nations calling for decolonization of all territories by the year 2000. Puerto Rico was not mentioned specifically in the resolution. The United States voted against it.

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## Political Growth

During the 1950s and 1960s, Puerto Rico began a transformation from an agrarian to an industrial-based society, but economic change came quicker than political change. Several attempts were made during the period to expand the commonwealth's political powers. For example, in 1959, the Commonwealth legislature submitted a bill for consideration by the Congress to transfer some important powers to Puerto Rico, such as the right to fix its own duty on certain imports, but no action was taken. After a 1963 bill introduced in the Congress to draft a new compact to give Puerto Rico greater autonomy failed, the Congress created the U.S.-Puerto Rico Commission on the Status of Puerto Rico. The commission recommended that the relationship be based on the principle of mutual consent and self-determination through a referendum.

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## The 1967 Referendum

In July 1967, pursuant to recommendations formulated by the status commission, a referendum was held in Puerto Rico on three political status alternatives: statehood, independence, or continued commonwealth status. Commonwealth status was supported by 60.4 percent of the voters, 39.0 percent favored statehood, and 0.6 percent supported independence.

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## Post-Referendum Activities

Subsequently, in 1973, an advisory group, appointed by President Richard Nixon and Governor Rafael Hernandez-Colon, explored ways to further develop the commonwealth status. The group recommended that Puerto Rico be able to

- participate in international organizations and make agreements with foreign countries consistent with U.S. policy;
- set minimum wage rates and environmental protection regulations;
- take part in establishing immigration quotas;
- levy, change, or eliminate tariffs on goods imported into the island, consistent with U.S. laws and international obligations;
- have representation in the U.S. Senate as well as the House of Representatives; and
- object to certain federal legislation and have such objections acted upon by the Congress.

These features were embodied in the "Compact of Permanent Union Between Puerto Rico and the United States," a bill introduced in the Congress in 1975. This proposal also called for establishing a U.S.-Puerto Rico commission to study the possibility of transferring federal

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functions to the island and instituting a system of contributory payments to the federal Treasury. After several hearings and amendments, the bill died in committee.

In December 1975, both a slightly modified version of the proposed compact that was introduced in the House of Representatives and a Senate version of the compact were not acted on.

Other initiatives included a statehood proposal made unilaterally by President Gerald Ford in December 1976. The proposed legislation called for hearings and studies on statehood's effects, a status referendum, and a constitutional convention. In January 1977, a Puerto Rican statehood bill was introduced in the House of Representatives and was referred to the Committee on Interior and Insular Affairs. Though a longtime proponent of statehood, Governor Carlos Romero-Barcelo did not mention the Ford proposal in his inaugural address on January 2, 1977. Instead, he concentrated primarily on the economic problems facing the island, including high unemployment, which was 21 percent in 1976.

In March 1977, President Jimmy Carter appointed an Interagency Study Group on Puerto Rico to study its economic problems but the report did not discuss status issues. In 1979, the House of Representatives passed a concurrent resolution reaffirming its commitment to respect and support the right of the people of Puerto Rico to self-determination.

In 1982, President Ronald Reagan reaffirmed the right of the Puerto Rican people to self-determination, and indicated his preference for statehood. During the 100th Congress, several bills were introduced to provide for Puerto Rico's self-determination but no action was taken.

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## Current Activities

In the November 1988 general election, all three of the major Puerto Rican political parties, which represent the three alternatives for the ultimate status of Puerto Rico, advocated a resolution of the status issue in the platforms they presented to the electorate. In 1988, Rafael Hernandez-Colon was reelected governor.

In accordance with the platform of his pro-commonwealth Popular Democratic Party, Governor Hernandez-Colon announced in his inaugural address the intention of the government of Puerto Rico to hold a referendum on Puerto Rico's political status. President George Bush, in his

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state of the union address in February 1989, reaffirmed the right of self-determination for the 3.3 million residents of Puerto Rico.

In April 1989, as Chairman of the Senate Committee on Energy and Natural Resources, you introduced legislation that would lay the groundwork for referendums on Puerto Rico's political future. This legislation would allow the Puerto Rican people to make a choice between three options: statehood, independence, or an enhanced commonwealth status.

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## Objectives, Scope, and Methodology

In discussions with your office, we agreed to update information on Puerto Rico's government finances and its socioeconomic conditions. We also agreed to analyze significant federal legislation that applies to Puerto Rico in selected programs and areas, summarize federal court cases since 1980 that discuss the legal status of Puerto Rico, and prepare a bibliography of selected studies on Puerto Rican politics and the self-determination processes of U.S. territories and other nations.

We obtained readily available information from recently published reports and studies prepared by federal agencies, Commonwealth government agencies, and universities. We noted some differences in the information in published reports, particularly for socioeconomic data. We used information from the most recently published reports we could obtain, and dates are given for data cited in this report. We recognize, however, that there are other sources that may have different or more recent information for the same category of data. The details of our results are presented in appendixes I through V. A brief summary is presented below.

Our work was performed between February and April 1989, in accordance with generally accepted government auditing standards.

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## Socioeconomic Conditions

Puerto Rico's economy grew at an average annual rate of 5.2 percent per year between 1950 and 1979, after accounting for inflation. From 1979 to 1983, the economy declined at an average annual rate of about 1 percent. It recovered to a 3.9 percent annual growth rate from 1983 to 1988. Over this period, Puerto Rico's economy was transformed from an agricultural to a manufacturing base, but some problems, such as high unemployment and poverty rates, remained.

The Commonwealth's economic development strategy promotes manufacturing, which has accounted for much of the growth in its economy

since 1950. Manufacturing provided 62 percent of the island's net income in 1988. However, the manufacturing sector's share of total employment dropped from about 20 to 18 percent between 1979 and 1988. This occurred because of more rapid growth in some nonmanufacturing sectors of the economy. For example, since 1980, employment increased rapidly in finances (which includes real estate and insurance) and services (which includes hotels). Government, however, remained the largest employer on the island (23 percent of the workforce).

Despite an improved standard of living since 1950 in areas such as life expectancy, housing and education, other socioeconomic indicators suggest large differences when compared to the United States:

- In 1979, nearly two-thirds of the island's population had incomes below the poverty level, compared to one-eighth of the total U.S. population.
- Per capita income in 1988 was \$5,157, but this was still 47 percent of Mississippi's \$10,992, the state with the lowest per capita income.
- The unemployment rate was 17.5 percent in fiscal year 1979, increased to 23.5 percent in fiscal year 1983, and decreased by one-third to 15.9 percent in fiscal year 1988. However, this was still much higher than Louisiana's 10.9 percent for calendar year 1988, the state with the highest unemployment rate.

Much like a decade ago, new jobs will need to be created in the future to improve the standard of living and the employment rate. Fifty-one percent of the island's population was under age 25 in 1980, compared to a U.S. average of 41 percent. Projections indicate that 41 percent of Puerto Rico's population will be under age 25 by the year 2000. As a result, future growth in job opportunities will be necessary to continue the improvement in Puerto Rico's standard of living although the pressure for new jobs may be reduced somewhat (see app. I).

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## Governmental Finances

We analyzed the Commonwealth's 1989 revenue and expenditure patterns and contrasted them with those of the 50 states and their localities. Unlike most states, the great majority of governmental functions are provided and financed by the central government and limited responsibilities have been delegated to its municipalities. The Commonwealth also operates 52 public corporations, such as a maritime shipping company, the island's telephone system, and a sugar company. Such activities are not traditionally part of state governmental services. As a percent of total revenues and excluding the sales of goods and services from the public corporations, the Commonwealth and its municipalities

rely more heavily on corporate and individual income taxes and less on property taxes than the average of all state and local governments. Spending patterns of the Commonwealth were also roughly comparable (excluding the municipalities and the commercial activities of public corporations) to those of state and local governments, though spending for education was proportionately less in Puerto Rico.

We also examined governmental debt. Puerto Rico's estimated per capita debt (\$2,971) in 1989 was about the same as the states (\$3,175) in 1987. However, Puerto Rico's borrowing is used mostly to support its many public corporations. After accounting for this, per capita debt levels are about one-third the size of the states and their localities.

Puerto Rico's 1989 budget projects revenues of about \$10.5 billion, of which the sales of goods and services of public corporations comprised 36 percent. Budget expenses for 1989 are projected at about \$9.8 billion, of which education accounts for 16 percent.

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## Significant Federal Legislation That Applies to Puerto Rico

We examined significant legislation affecting Puerto Rico in seven major areas: income support, health care, taxes, immigration, labor, environment, and trade. Federal laws in the last four areas generally apply to Puerto Rico in the same manner as they do to the states. About one-half of the income support programs are more limited for Puerto Rico, either in funding or eligibility, than they are for the states. Funding for health care under Medicaid is capped for Puerto Rico. For Medicare, the prospective payment rates for inpatient hospital services are based on the cost of Puerto Rican hospitals rather than the national average cost as it is in the states. With regard to both individual and corporate income taxes, federal laws generally do not apply (see app. III).

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## Recent Federal Court Cases That Discuss Legal Status

During the 1980s, federal courts have rendered a number of decisions on issues where the legal status of Puerto Rico was relevant to the decision. In all but one case, the federal courts treated Puerto Rico as a state. In this one case, the Supreme Court upheld a lower reimbursement rate than that for the states under the Aid to Families with Dependent Children program (see app. IV).

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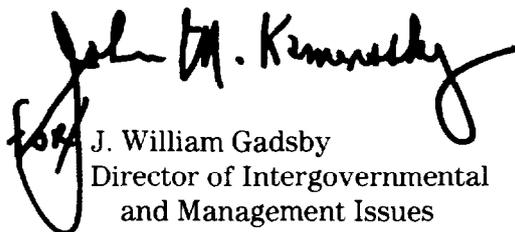
As agreed with your office, we obtained oral comments from the Puerto Rican government and key political party officials on a draft of this report. These officials said that we did not (1) adequately address the

historical and cultural dimensions of the status issue, (2) assess the effects of the various status options, and (3) describe the significance of some of the descriptive information. We agree that these dimensions are important. However, we were not requested to assess the effects of the various status options. Further, given the time available to meet the needs of the Committee, we were not able to fully address the other concerns. We did, however, revise this report to provide additional information pertaining to Puerto Rico's historical and cultural dimensions. Puerto Rican officials also provided technical comments and updated information, which we incorporated where appropriate in this report.

We are sending copies of this report to other interested congressional committees and members; the Governor, Commonwealth of Puerto Rico; the Resident Commissioner; the Director, Puerto Rico Federal Affairs Administration; representatives of the three major political parties; and the leaders of Puerto Rico's Legislative Assembly.

The major contributors to this report are listed in appendix V.

Sincerely yours,

  
J. William Gadsby  
Director of Intergovernmental  
and Management Issues

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**Abbreviations**

AFDC	Aid to Families with Dependent Children
EPA	Environmental Protection Agency
GAO	General Accounting Office
HHS	Department of Health and Human Services
NLRB	National Labor Relations Board
SSI	Supplemental Security Income
U.N.	United Nations
U.S.	United States



# Socioeconomic Conditions in Puerto Rico

The economy of the Commonwealth of Puerto Rico grew significantly between 1950 and 1979. In those years, inflation adjusted gross product grew at an average annual rate of 5.2 percent.<sup>1</sup> Gross product declined at an annual rate of about 1 percent from 1979 to 1983, but grew at a rate of 3.9 percent from 1983 to 1988. While Puerto Rico's economy was transformed during the past four decades from an agricultural to a manufacturing base, some problems, such as relatively low incomes and high unemployment, still persist.

The Commonwealth's economic development strategy promotes manufacturing, which accounted for much of the growth in the island's economy since 1950. In 1988, manufacturing provided 18 percent of total employment and 56 percent of gross product.<sup>2</sup>

There has been a substantial shift in the manufacturing sector from labor- to capital-intensive industries. For example, textile and apparel employment has remained steady but employment in electrical machinery manufacturing has increased. Since 1980, employment increased the most rapidly in finances (including real estate and insurance) and services (which includes hotels). Federal, Commonwealth, and local governments employed 23 percent of the workforce in 1988, the largest employment sector in Puerto Rico.

Puerto Rico has experienced an improved standard of living since 1950 in areas such as life expectancy, housing, and education. However, several other socioeconomic indicators show less progress. For example, similar to conditions a decade ago, new jobs will need to be created in the future to improve the standard of living and the employment rate. Fifty-one percent of the island's population was under age 25 in 1980, compared with a U.S. average of 41 percent. As a result, the future growth in job opportunities will be critical to continuing the improvement in Puerto Rico's standard of living.

<sup>1</sup>All figures reported for Puerto Rico are based on its July 1-June 30 fiscal year, unless noted otherwise.

<sup>2</sup>However, manufacturing provided 40 percent of gross domestic product in 1988. Gross product includes income earned only by residents of Puerto Rico. Gross product was \$18.4 billion in 1988. In contrast, gross domestic product includes all income earned in Puerto Rico, and it was \$25.6 billion in 1988.

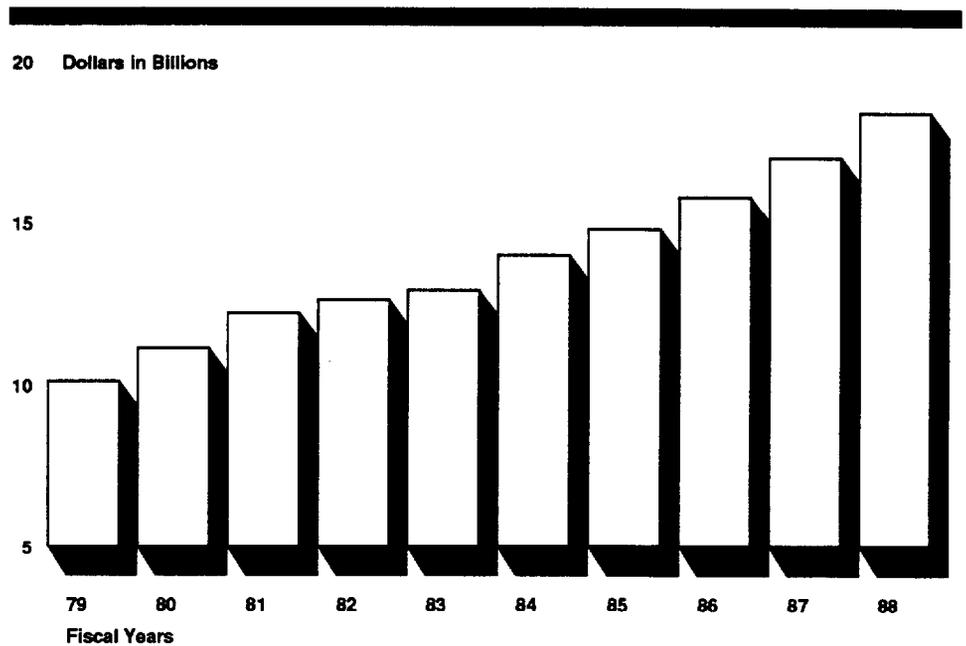
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## Puerto Rico's Economy Was Transformed Through Industrialization

Puerto Rico's economy was based on agriculture until the 1940s. Then the island government recognized that agriculture alone could not sustain its economy and growing population. As a result, it decided to seek economic growth through industrialization. Early attempts to industrialize through government-owned and government-operated enterprises, however, proved unsuccessful. Puerto Rico's leaders concluded that a substantial infusion of external capital would be required to attain full employment and equalize the standard of living between the states and the island.

Consequently, in 1948, Puerto Rico initiated a program, known as Operation Bootstrap, to attract U.S. manufacturing investment. A comprehensive set of incentives was devised, highlighted by U.S. corporations' total exemption from Puerto Rican corporate income and property taxes. Also, U.S. laws in effect at that time exempted Puerto Rican subsidiaries of U.S. firms from federal corporate taxes and allowed duty-free shipments between the states and Puerto Rico.

Figure I.1: Puerto Rico Gross Product  
(1979-88)



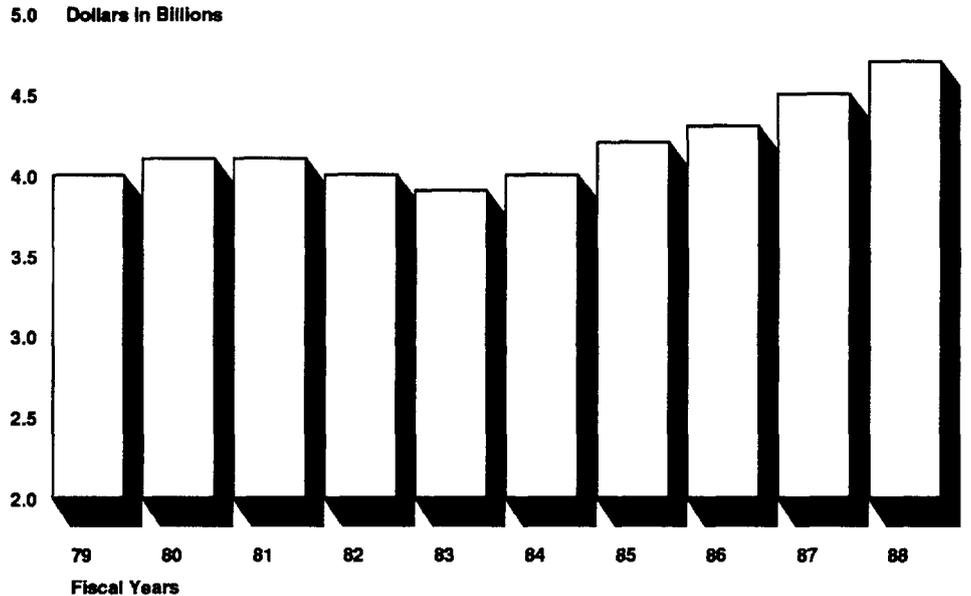
Source: Puerto Rico Planning Board, Economic Report to the Governor (1988).

## Major Indicators Show Continued Economic Expansion

Puerto Rico's economic growth accelerated rapidly after 1950. The island's gross product—the total income available to residents—increased 13-fold between 1950 and 1979. And Puerto Rico's gross product nearly doubled between 1979 and 1988 from \$10 billion to over \$18 billion as shown in figure I.1.

The gross product grew at an annual rate of 5.2 percent from 1950 to 1979, after accounting for inflation. As shown in figure I.2, Puerto Rican real gross product declined from 1979 to 1983 at a rate of less than 1 percent and increased from 1983 to 1988 at a rate of 3.9 percent. Growth in the U.S. gross national product during these two periods was 1.0 percent and 4.0 percent, respectively.

Figure I.2: Puerto Rico Gross Product  
(1979-88) (In Constant 1954 Dollars)

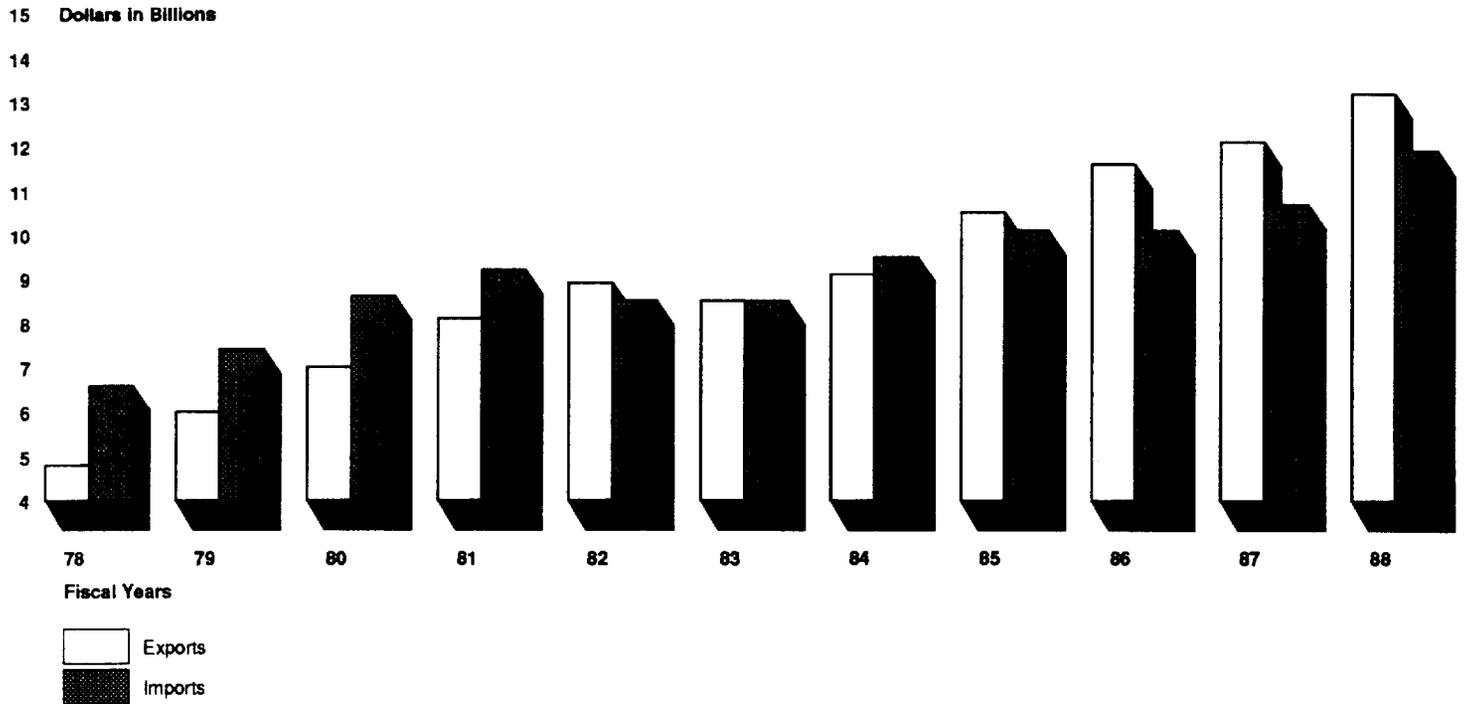


Source: Puerto Rico Planning Board, Socioeconomic Statistics (1988).

As the economy grew, personal income and employment increased considerably. Personal income rose from \$653 million in 1950 to nearly \$17 billion in 1988. From 1950 to 1988, employment grew from 596,000 to 873,000. Per capita personal income in Puerto Rico grew from \$296 in 1950 to \$3,149 in 1979, one of the highest in the Caribbean. However, Puerto Rico's per capita income was less than half that of the lowest state at that time. In 1988, its per capita personal income reached \$5,157, which was 47 percent of Mississippi's \$10,992, the state with the lowest per capita income. Nevertheless, this is an improvement over 1950, when the island's per capita income was 39 percent of that of the lowest state.

Puerto Rico's economic growth was accompanied by substantial trade expansion. Merchandise exports increased from \$235 million in 1950 to \$13.2 billion in 1988, while imports rose from \$345 million to \$11.9 billion. Until 1982, imports usually exceeded exports because most raw materials and intermediate goods used by the manufacturing sector were imported as were most consumer goods, including agricultural

Figure I.3: Puerto Rico Trade Data (1978-88)



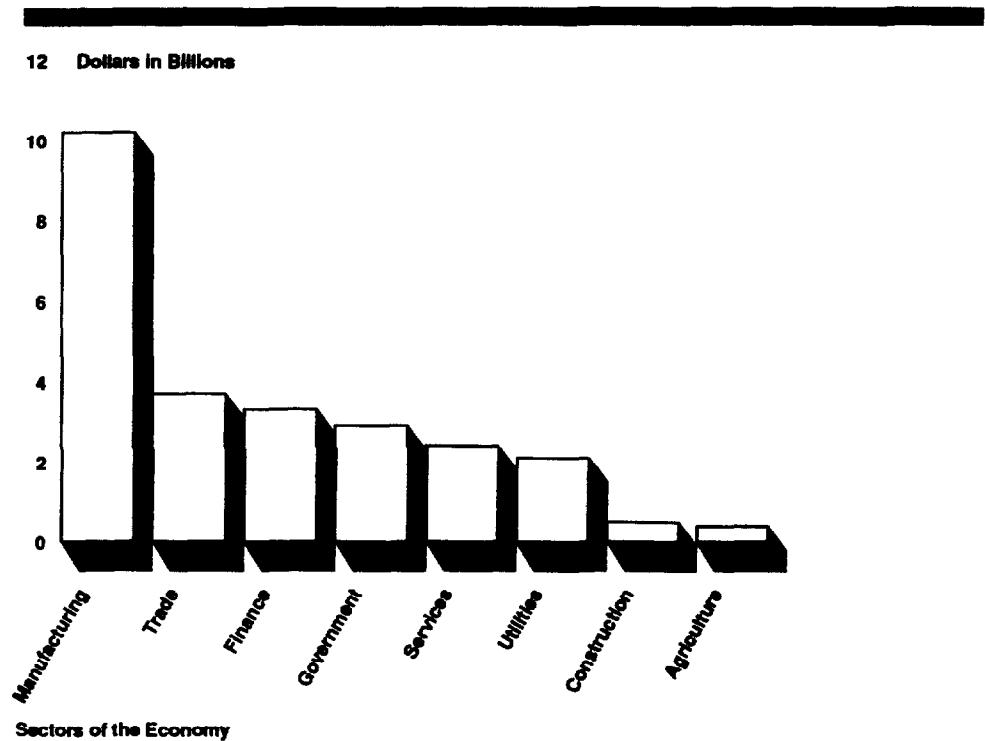
Note: Figures for 1988 are preliminary.

Source: Puerto Rico Planning Board, *Socioeconomic Statistics* (1988).

products. Figure I.3 shows Puerto Rico experienced a trade surplus in 1982, and annual surpluses beginning in 1985.

Puerto Rico's economy is fully integrated with that of the United States. As a result, the states have been its primary trading partner. The percentage of Puerto Rico's exports to the states has remained relatively constant over the past four decades. It was 89 percent in 1950 and 88 percent in 1988. However, goods shipped from the states have decreased from 92 percent of Puerto Rico's imports in 1950 to 67 percent in 1988.

Figure I.4: Puerto Rico Gross Domestic Product by Sector (1988)



Source: Puerto Rico Planning Board, *Economic Report to the Governor* (1988).

## Manufacturing Remains the Driving Economic Force but Its Structure Has Changed

Spurred almost entirely by investments of U.S. firms, manufacturing has become the most important sector in Puerto Rico's economy. Manufacturing net income increased from \$89 million (current dollars) in 1950 to \$9.4 billion in 1988, or 62 percent of total net income. Figure I.4 illustrates the manufacturing sector's role as the dominant contributor to the island's gross product.

From 1950 to 1979, manufacturing jobs grew from 9 to 20 percent of total employment. But between 1980 and 1988, manufacturing's share of total employment declined to 18 percent, in part because of more rapid growth in other sectors of the economy. In 1988, manufacturing employment stood at about 157,000 jobs. However, there was an employment shift from labor- to capital-intensive manufacturing industries. For example, employment in the apparel industry stayed constant at about 33,600 jobs between 1980 and 1988, while electrical machinery increased from 18,000 to nearly 23,000 jobs during the same period as shown in table I.1.

**Table I.1: Distribution of Employment in Puerto Rican Manufacturing Industries (1980-88)**

Industry group	Employment in thousands		Absolute change	Percentage change
	1980	1988		
Electrical equipment	18.0	22.8	4.8	26.7
Chemicals	15.6	19.1	3.5	22.4
Paper and allied products and printing and publishing	5.1	5.4	0.3	5.9
Textile mill products	3.4	3.6	0.2	5.9
Scientific instruments	13.6	13.8	0.2	1.5
Food and kindred products	23.4	23.6	0.2	0.9
Apparel	33.6	33.6	0.0	0.0
Wood and furniture products	3.6	3.5	-0.1	-2.8
Stone, clay, and glass items	4.8	4.6	-0.2	-4.2
Petroleum and allied products	7.7	7.2	-0.5	-6.5
Primary metal and allied products	5.3	4.9	-0.4	-7.5
Leather and leather products	6.6	5.9	-0.7	-10.6
Miscellaneous	3.9	3.1	-0.8	-20.5
Nonelectrical machinery and transportation equipment	7.9	4.7	-3.2	-40.5
Tobacco products	2.1	1.2	-0.9	-42.9
<b>Total</b>	<b>154.6</b>	<b>157.0</b>	<b>2.4</b>	<b>1.6</b>

Sources: Commonwealth of Puerto Rico, Department of Labor and Human Resources, Census of Manufacturing Industries of Puerto Rico, 1980 and 1988.

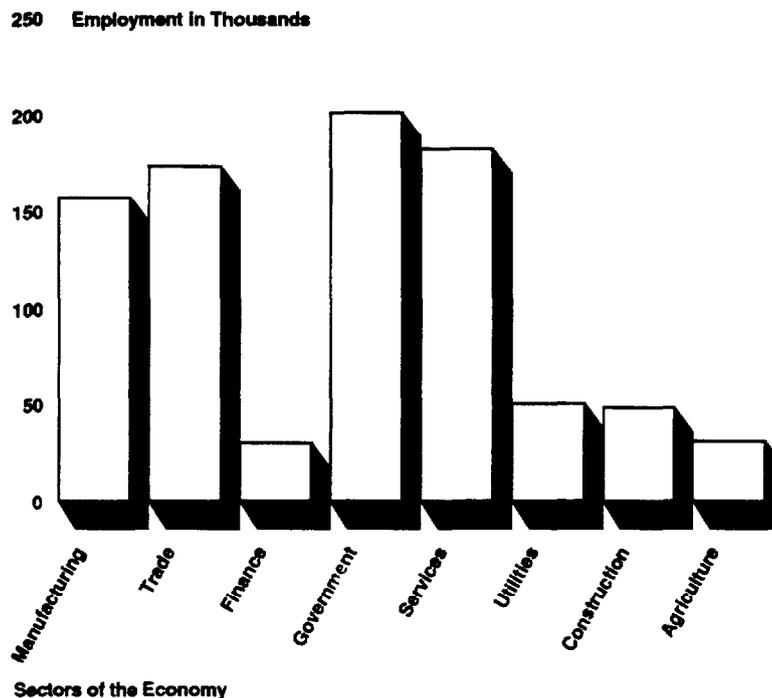
## Government Remains a Major Sector of the Economy

While manufacturing is the largest contributor to Puerto Rico's gross product, government has become the leading sector in terms of employment as shown in figure I.5. By 1988, the government employed 201,000 people at all levels—federal, commonwealth, and municipal—which comprised 23 percent of the total workforce. In addition, spending by the federal, commonwealth, and municipal governments contributed 24.1 percent of the island's gross domestic product in 1988.

Federal disbursements to Puerto Rico increased from \$2.9 billion in 1979 to \$4.2 billion in 1988. Transfer payments to individuals, such as earned pensions and welfare and social security entitlements, comprised 21.4 percent of Puerto Rico's personal income in 1988 (it was 21.2 percent in 1979). In the states, transfers to individuals were about 13.7 percent of personal income in 1988.

Federal income support expenditures in Puerto Rico include earned benefits for veterans, such as pensions, medical services, and related support. For example, about 68,000 veterans of the conflicts in Korea and

Figure I.5: Employment in Puerto Rico by Economic Sector (Fiscal Year 1988)



Source: Puerto Rico Planning Board, Economic Report to the Governor (1988).

Vietnam were residing in Puerto Rico in March 1988. The Department of Veterans Affairs had fiscal year 1988 spending in Puerto Rico of \$384.8 million. Compensation and pension payments to veterans represent about 67.3 percent of that figure.

Puerto Rico's central and municipal government employment has grown at roughly the same rate as the Puerto Rican economy. From 1979 to 1988, government employment increased at an average annual rate of 1.8 percent compared with 1.9 percent for the overall Puerto Rican economy and 0.8 percent for the manufacturing sector. By 1988, all government sector employment comprised 201,000 persons or 23 percent of the total workforce.

The Commonwealth provides many public services that are typically local government functions in the states, including public education and police and fire services. In addition, the Commonwealth provides public utility services and owns proprietary-type companies, which are typically private sector functions in the states. These include public ownership and operation of the Puerto Rico Telephone Company, Electric Company, Sugar Corporation, and a maritime freight shipping company.

## Other Economic Sectors Also Grew Substantially

In addition to manufacturing and government, other economic sectors achieved substantial growth. As shown in table I.2, net income and employment between 1980 and 1988 increased markedly in services (including hotels) and finances (including insurance and real estate).

Table I.2: Increase in Number of Persons Employed and Income in Selected Puerto Rican Economic Sectors (1980-88)

	Employment			Net income		
	1980 (thousands)	1988 (thousands)	Increase (percent)	1980 (millions)	1988 (millions)	Increase (percent)
Finance, insurance, and real estate	21	30	43	\$1,346	\$2,806	108
Manufacturing	143	157	10	4,809	9,433	96
Services (including hotels)	135	182	35	1,130	2,074	84
Transportation and other public utilities	47	50	6	1,003	1,634	63
Trade (wholesale and retail)	138	173	25	1,621	2,590	60
Construction	44	48	9	339	447	32

Source: Puerto Rico Planning Board, Economic Report to the Governor (1988)

The hotel industry, which is an essential component of the tourism sector, experienced serious financial problems during the 1970s. In 1977, for example, the net consolidated loss for hotels was \$6.6 million. There had been rapid construction in the 1960s, and the number of hotel rooms peaked at 8,806 in 1975. The number of rooms decreased about 37 percent from 1975 to 1988. Despite the decline in hotel rooms, the number of hotel visitors increased 10.2 percent from 1975 to 1988. The increase in the number of hotel registrations coupled with a decline in hotel rooms has increased the percent of rooms rented from 58.8 in 1983 to 74.5 in 1988.

## Gains in Social Conditions Realized, but Problems Remain

The island's economic growth was accompanied by significant improvements in social conditions. Despite gains in the adequacy of health care, housing, and education, however, problems remain.

Better medical and sanitation services, among other factors, contributed greatly to controlling infectious diseases and reducing infant mortality rates in Puerto Rico. As a result, the island's life expectancy was 74 years in 1986, slightly higher than the U.S. average and one of the highest in the world.

The island's housing stock and quality also increased greatly. While in 1940, 80 percent of Puerto Rico's housing was considered inadequate, this number was reduced to 18.2 percent by 1980, according to the latest U.S. census of housing. Various factors, including island land reform and federal assistance and mortgage insurance, have continued to contribute to improved housing. However, in 1980, 12.4 percent of occupied housing in Puerto Rico lacked complete private plumbing facilities compared with 2.2 percent in the United States.

Educational opportunities also have improved markedly. While only one-half of the eligible children attended school in 1940, four of five were enrolled in 1976, and significant progress has been made in reducing illiteracy, which was 80 percent at the turn of the century. While the population is predominantly Spanish-speaking, about 42 percent has some English proficiency, according to the 1980 census. Despite this educational progress, severe problems exist. The island's illiteracy rate was about 11 percent in 1988. In the United States as a whole, the illiteracy rate has been estimated at 1 percent. Furthermore, elementary and secondary educational expenditures are estimated at nearly \$1,400 per pupil in fiscal year 1988 in Puerto Rico. In fiscal year 1985, the lowest state expenditure was \$1,594 per pupil. Nevertheless, higher education is increasingly in demand in Puerto Rico. From 1970 to 1987, the percentage of persons aged 18-24 attending college more than doubled from 17 percent to 40 percent. While 48 percent of the 18-24 population attended college in the United States, the rate of increase has been much faster in Puerto Rico. Enrollment in public and private colleges totaled about 155,800 in 1988.

Despite progress on a number of fronts, Puerto Rico faces various urban ills, such as crime, alcoholism, drug addiction, and mental health problems. According to the Federal Bureau of Investigation, 46 states (including the District of Columbia) had higher crime rates than Puerto Rico. Puerto Rico's crime rate was 3,358.8 per 100,000 population in 1987, compared with 5,550 per 100,000 in the United States. However, in terms of violent crime, only seven states had a higher violent crime rate than Puerto Rico. Also, the island's 1985 infant mortality rate was 14.9 per thousand live births, compared with 10.6 per thousand in the United States. Only the District of Columbia had a higher infant mortality rate in 1985.

## Chronic Poverty and Unemployment Persist

Chronic high poverty rates persist in Puerto Rico despite an improving economy. In 1979, the Census Bureau reported 62.4 percent of Puerto Rico's population had incomes below the federal poverty level, compared with 12.4 percent of the U.S. population.

Although total employment in Puerto Rico grew from 1950 to 1979, population growth exceeded job creation by more than 15 percent. From 1979 to 1988, the reverse has been true as job creation has increased at a rate nearly three times that of population growth. But island unemployment continues to be two to three times greater than the national average and incomes remain relatively low. In calendar year 1988, the unemployment rate was 15.0 percent compared with the U.S. average of 5.5 percent (Louisiana had the highest unemployment rate, 10.9 percent in 1988). This has been partially responsible for the high levels of participation in public assistance programs. For example, in 1988, 43.5 percent of the population was eligible for the Nutrition Assistance program, a more restrictive version of Food Stamps, which operates only in Puerto Rico.

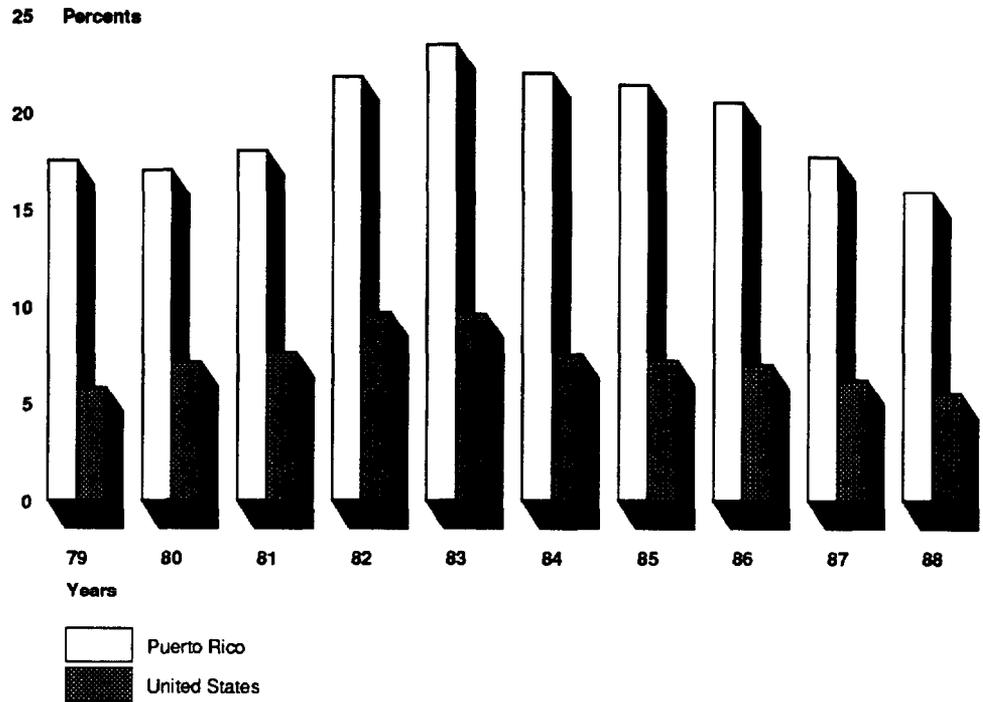
Finding employment for an expanding population has been a problem in Puerto Rico. As shown in figure I.6, unemployment was about 17.5 percent in fiscal year 1979, and increased to 23.5 percent in 1983 before declining to 15.9 percent in 1988.

The island's industrialization created a net increase of 102,000 manufacturing jobs from 1950 to 1988, along with 19,000 jobs in other nongovernment sectors. During the same period, however, the agricultural sector lost 179,000 jobs while 50,000 home needlework jobs also were eliminated between 1950 and 1979. Moreover, because the manufacturing sector became increasingly capital intensive, the island's industrialization did not absorb the labor force growth from 1950 to 1979.

Two factors, however, have served to stabilize employment and population trends in Puerto Rico—government employment and out-migration. Government employment (federal, Commonwealth, and municipal) increased from 106,000 in 1970 to 201,000 in 1988, an increase of 89.6 percent. Additionally, migration to the states totaled about 700,000 persons from 1947 to 1972. Net out-migration is estimated at 280,000 from 1980 to 1988: About 2.3 million Puerto Ricans now reside in the states.

Puerto Rico's population has grown from 2.9 million in 1975, to 3.3 million in 1988, according to the Economic Report to the Governor (1988).

Figure I.6: Puerto Rico and U.S. Unemployment Rates (1979-88)



Source: Puerto Rico Planning Board, *Preliminary Report of the Economy of Puerto Rico* (1988); Department of Labor, Bureau of Labor Statistics, *Employment and Earnings* (May 1989).

Puerto Rico's population density was 947 persons per square mile in 1986; this is 14 times greater than that of the United States as a whole and comparable with Rhode Island, which has a population density of 924 persons per square mile.

Average family size has been declining in Puerto Rico. Average family size was 5.2 persons in 1940 and declined to 3.7 persons in 1979. From 1980 to 1988, Puerto Rico had a population increase of nearly 3.6 percent, compared with 8.1 percent in the United States.

Moreover, the island's population has become predominately urban. In 1980, 67 percent of the population was classified as urban, compared with 30 percent in 1940 (in 1980, 74 percent of the U.S. population was classified as urban). As of 1980, about one-third of the island's population lived in the San Juan metropolitan area. Further, 51 percent of Puerto Rico's population was under 25 years old in 1980, whereas 41

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percent was under 25 years old in the states. But the Puerto Rico Planning Board estimated that the percentage of the population under 25 will decline to 41 percent by the year 2000. Having an increasingly older population may somewhat reduce the pressure for new job creation.

# Governmental Finances in Puerto Rico

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Government in Puerto Rico includes the Commonwealth central government (with its 52 public corporations) and 78 municipalities. Unlike most states, the great majority of governmental functions are administered and financed by the central government and its public corporations and limited responsibilities have been delegated to the municipalities.

We analyzed the Commonwealth's 1989 revenue and expenditure patterns and contrasted them with the averages for state and local governments in the 50 states and the District of Columbia. We also examined trends in governmental debt.

As a percent of total revenues, and excluding the sales of goods and services, the Commonwealth and its municipalities rely more heavily on corporate and individual income taxes and less on property taxes than the average of all state and local governments. Also, as a percent of total expenditures, spending patterns of the Commonwealth were roughly comparable (excluding the municipalities and the commercial activities of public corporations) with those of state and local governments, though spending for education was less in Puerto Rico.

The level of total debt per capita is about that of state and local governments, but excluding the debt of public corporations it is less than state and local borrowing. The debt of these public corporations is generally financed by the revenues of these corporations, similar to private corporate borrowing. However, since they are governmental entities, interest on their bonds is tax-exempt.

While comparisons with state and local revenues, expenditures, and debt levels provide a useful context for describing Puerto Rico's government finances, the comparison is a rough one at best for a number of reasons. First, some financial classifications of revenues by source and expenditures by purpose were not comparable because such data were not readily available. Second, the Commonwealth's governmental activities in some respects, such as supplying agriculture credit, correspond more closely to those of the federal government than those of state and local governments. And finally, differences in the pattern of Commonwealth revenues and expenditures and the averages for state and local governments may not necessarily be significant, because wide variations exist among the states.

We have not calculated the burden of taxes and debt on residents of Puerto Rico to compare them to those in states and localities because a

very large proportion of taxes collected are ultimately paid by foreign owners and customers of Puerto Rican businesses. Consequently, expressing taxes as a percent of residents' personal income would substantially overstate resident tax burdens. We have computed tax and debt amounts per capita, but these should not be interpreted as resident tax and debt burdens.

## Revenue Sources

We analyzed Puerto Rico's revenues in two ways, first by including its public corporations, and then without. When the public corporations are included, Puerto Rico's most important revenue sources are sales of goods and services (36 percent), individual and corporate income taxes (19 percent), federal funds (17 percent), and excise taxes (10 percent). Table II.1 summarizes revenues by source for Puerto Rico (1989) and state and local governments (1987).

**Table II.1: Total and Per Capita Revenues by Source—Puerto Rico Contrasted With State and Local Governments**

Dollars in millions

Revenue source	Puerto Rico (1989 estimated) <sup>a</sup>			States (1987) <sup>b</sup>		
	Amount	Per capita	Percent of total	Amount	Per capita	Percent of total
Sales of goods and services	\$3,747	\$1,135	36	\$49,810	\$205	6
Individual income tax	923	280	9	83,681	344	10
Corporate income tax	1,038	315	10	22,672	93	3
Sales tax	1,072	325	10	144,293	593	17
Property tax	282	85	3	121,227	498	14
Federal funds <sup>c</sup>	1,770	536	17	114,996	472	14
All other revenue sources	1,624	492	16	305,911	1,257	36
<b>Total</b>	<b>\$10,456</b>	<b>\$3,168</b>	<b>100</b>	<b>\$842,590</b>	<b>\$3,462</b>	<b>100</b>

<sup>a</sup>Includes public corporations and municipalities.

<sup>b</sup>Includes local governments and the District of Columbia.

<sup>c</sup>Includes federal grants and intergovernmental transfers.

Source: Puerto Rico figures were prepared by the Governor's Economic Advisory Council. State figures are from the Census Bureau's Government Finances in 1986-87.

The sales of various goods and services, at 36 percent of the total, comprise the largest share of Puerto Rico's revenues. This is high compared with the states and localities (6 percent) because of the many public corporations owned by the Commonwealth, such as electric power, telephone service, various credit corporations, and sugar marketing. For state and local governments, "sales of goods and services" consists of

five categories of revenues: government-owned and government-operated water, electric, gas, transit systems, and liquor store receipts. While on average this is a relatively small source of revenue, there is wide variation among the states, ranging from as much as \$894 per capita (24 percent of total revenue) in Nebraska to as little as \$50 per capita (1 percent of total revenue) in Rhode Island.

In contrast, the category of “all other revenue sources” for state and local governments is 36 percent and 16 percent for Puerto Rico. For states and localities, this includes a significant amount of revenues generated by commercial activities that Puerto Rico categorizes as the sales of goods and services.

We were unable to sort out the differences to make these two categories comparable between Puerto Rico and states and localities. Furthermore, revenues from the sales of goods and services may not be available for general government expenses because (1) they may be restricted for the use of a particular enterprise or fund, and (2) the revenues generated are partly offset by the cost of producing or delivering the goods and services sold. Such costs are not shown in table II.1 and no information was readily available about restrictions on the use of revenues from sales. Therefore, we recomputed table II.1 to exclude the sales of goods and services, as shown in table II.2.

**Appendix II  
Governmental Finances in Puerto Rico**

**Table II.2: Total and Per Capita Revenues by Source—Puerto Rico Contrasted With State and Local Governments<sup>a</sup>** (Excludes Commercial and Public Utilities)

Dollars in millions

Revenue source	Puerto Rico (1989 estimated) <sup>b</sup>			States (1987) <sup>c</sup>		
	Amount	Per capita	Percent of total	Amount	Per capita	Percent of total
Individual income tax	\$923	\$280	19	\$83,681	344	11
Corporate income tax	1,038	315	22	22,672	93	3
Sales tax	1,072	325	22	144,293	593	18
Property tax	282	85	6	121,227	498	15
Federal funds	1,126 <sup>d</sup>	341	24	114,996	472	14
All other revenue sources	434	101	7	305,911	1,257	39
<b>Total</b>	<b>\$4,775</b>	<b>\$1,447</b>	<b>100</b>	<b>\$792,780</b>	<b>\$3,257</b>	<b>100</b>

<sup>a</sup>Excludes sales of goods and services.

<sup>b</sup>Includes municipalities.

<sup>c</sup>Includes local governments and the District of Columbia.

<sup>d</sup>Includes federal grants and intergovernmental transfers, but excludes \$644 million in federal aid to the public corporations.

Source: Puerto Rico figures were prepared by the Governor's Economic Advisory Council. State figures are from the Census Bureau's Government Finances in 1986-87.

Table II.2 shows that Puerto Rico relies more heavily on individual and corporate income taxes (41 percent), compared with an average of 14 percent for states and localities. Also, Puerto Rico relies less on the use of the property tax than states and localities do on average (6 percent versus 15 percent).

Total revenues, including public corporation revenues, as a percent of gross product for Puerto Rico was 57 percent (it was 26 percent when corporation revenues are excluded). For the states, total revenue was 19 percent of gross national product when the revenues of utilities and liquor stores are included, and 18 percent when they are not.

## Expenditures

We also analyzed Puerto Rico's expenditures, both with and without the commercial activities and public utilities. Taken together, commercial activities and utilities are Puerto Rico's largest expenditures. Also, the Commonwealth spends in total about the same per capita as other state

**Appendix II  
Governmental Finances in Puerto Rico**

and local governments. Table II.3 compares expenditures by function for Puerto Rico (1989 estimated) and the states and localities (1987).<sup>1</sup>

**Table II.3: Total and Per Capita Expenditures by Function—Puerto Rico Contrasted With State and Local Governments<sup>a</sup>**

Dollars in millions

Expenditure category	Puerto Rico (1989 estimated) <sup>a</sup>			States (1987) <sup>b</sup>		
	Amount	Per capita	Percent of total	Amount	Per capita	Percent of total
Education	\$1,552	\$470	16	\$229,932	\$945	30
Miscellaneous commercial	1,496	453	15	3,228	13	<sup>c</sup>
Public utilities	1,326	402	13	65,509	269	8
Health/hospitals	732	222	7	56,972	234	7
Transportation	592	179	6	59,820	246	8
Housing and community development	574	174	6	11,766	48	2
Public safety	570	173	6	56,651	233	7
Government administration	419	127	4	34,896	143	5
Interest on general debt <sup>d</sup>	368	112	4	1,816	172	5
Natural resources	367	111	4	9,738	40	1
Public welfare	357	108	4	80,090	329	10
Sewerage	287	87	3	14,862	61	2
Parks and recreation	103	31	1	10,978	45	1
Social insurance administration	81	25	1	2,752	11	<sup>c</sup>
Other and unallocable <sup>e</sup>	981	297	10	93,854	386	12
<b>Total</b>	<b>\$9,804</b>	<b>\$2,971</b>	<b>100</b>	<b>\$772,864</b>	<b>\$3,175</b>	<b>100</b>

<sup>a</sup>Includes Commonwealth's expenditures but not municipalities' expenditures

<sup>b</sup>Includes state and local governments' expenditures.

<sup>c</sup>Less than 1 percent.

<sup>d</sup>Includes agriculture (\$171 million in Puerto Rico).

<sup>e</sup>Includes interest of miscellaneous commercial activities (\$194 million in Puerto Rico).

Source: Puerto Rico figures were prepared by the Governor's Economic Advisory Council. State figures are from the Census Bureau's Government Finances in 1986-87.

When commercial activities and utilities are excluded, we find that although the spending patterns in Puerto Rico and the states are roughly

<sup>1</sup>The expenditures shown for Puerto Rico include only those of the central government and public corporations while those shown for the states include local government expenditures. Puerto Rico municipal expenditures were not readily available for 1989. In 1982, the year for which the latest Census Bureau data were available, municipal expenditures were \$291 million compared with the Commonwealth's expenditures of \$5.7 billion (about 5 percent). The expenditures for public corporations and other central government agencies have been reclassified in order to correspond more closely to the Census Bureau's classification scheme.

comparable in many categories, there are several exceptions. For example, spending on education in Puerto Rico is 23 percent of total expenditures, compared with 33 percent in the states, and 5 percent on welfare, compared with 11 percent in the states (see table II.4).

**Table II.4: Total and Per Capita Expenditures by Function—Puerto Rico Contrasted With State and Local Governments<sup>a</sup> (Excludes Commercial and Public Utilities)**

Dollars in millions

Expenditure category	Puerto Rico (1989 estimated) <sup>a</sup>			States (1987) <sup>b</sup>		
	Amount	Per capita	Percent of total	Amount	Per capita	Percent of total
Education	\$1,552	\$470	23	\$229,932	\$945	33
Health/hospitals	732	222	11	56,972	234	8
Transportation	592	179	9	59,820	246	8
Housing and community development	574	174	8	11,766	48	2
Public safety	570	173	8	56,651	233	8
Government administration	419	127	6	34,896	143	5
Interest on general debt	368	112	5	41,816	172	6
Natural resources <sup>c</sup>	366	111	6	9,738	40	1
Public welfare	357	108	6	80,090	329	11
Sewerage	287	87	4	14,862	61	2
Parks and recreation	103	31	2	10,978	45	2
Social insurance administration	81	25	1	2,752	11	<sup>c</sup>
Other	787	238	12	93,854	386	13
<b>Total</b>	<b>\$6,788</b>	<b>\$2,057</b>	<b>100</b>	<b>\$704,127</b>	<b>\$2,893</b>	<b>100</b>

<sup>a</sup>Includes Commonwealth's expenditures but not municipalities' expenditures. It also excludes commercial activities and utilities.

<sup>b</sup>Includes state and local government's expenditures.

<sup>c</sup>Less than 1 percent.

<sup>d</sup>Includes agriculture (\$171 million in Puerto Rico).

Source: Puerto Rico figures were prepared by the Governor's Economic Advisory Council. State figures are from the Census Bureau's Government Finances in 1986-87.

## Puerto Rico's Debt

Puerto Rico's debt, including that of the Commonwealth, its municipalities, and its public corporations, totaled about \$10.1 billion in 1987. On a per capita basis, Puerto Rico's debt was estimated at \$2,971 in 1989, and that of state and local governments was \$3,175 in 1987. Puerto Rico's debt is equivalent to 60 percent of its gross product. However, as noted earlier, a comparison with state and local governments' debt is not exact, because some of Puerto Rico's credit activities may be considered

similar to some of those of the federal government and private corporations.

Puerto Rico's average annual debt growth rate since 1975 has been fairly constant, ranging from about 5 to 7 percent. For state and local governments, it has averaged about 10 percent. Puerto Rico's debt for selected years between 1975 and 1987, along with the average annual growth rate, is shown in table II.5 below.

**Table II.5: Puerto Rico's Debt and Annual Growth Rate (1975-87)**

Year	Public debt (millions)	Average annual growth rate (percent)
1975	\$5,089.7	
1978	6,076.5	6.1
1981	7,505.0	7.3
1984	8,692.6	5.0
1987	10,142.6	5.3

Source: Planning Board of Puerto Rico, Economic Report to the Governor 1988.

The proportion of Puerto Rico's debt among the Commonwealth, municipalities, and public corporations has been fairly constant between 1975 and 1987. In 1987, the Commonwealth's portion was 25 percent, the municipalities' portion 4 percent, and the public corporations' portion 71 percent. The public corporations' portion peaked in 1981 at 76 percent and has been declining since, while the Commonwealth's portion bottomed out in 1979 and 1981, and has been rising since. The Commonwealth generally uses general obligation bonds, which are guaranteed by the taxing power of the government, while its public corporations use revenue bonds, which pledge the corporations' future revenues for debt repayment.

Puerto Rico's total public debt as a percent of its gross product has declined since 1975. In 1975, it was 71 percent and dropped to 60 percent in 1987. By comparison, state and local government debt as a percent of the U.S. gross national product was 14 percent in 1975, and rose to 16 percent in 1987.

Excluding Puerto Rico's debt attributable to public corporations, the percent of the Commonwealth's and municipalities' debt in relation to its gross product is comparable with that of state and local governments. Table II.6 shows Puerto Rico's debt, excluding that of the public corporations, compared with that of state and local governments for selected

years between 1975 and 1987. It also compares them as a percent of gross product and on a per capita basis.

**Table II.6: Percent of Debt to Gross Product and Debt Per Capita—Puerto Rico Contrasted With State and Local Governments (1975-87)**

Year	Puerto Rico			State and local governments		
	Public debt <sup>a</sup> (millions)	Debt to gross product (percent)	Debt per capita	Public debt <sup>b</sup> (millions)	Debt to gross national product (percent)	Debt per capita
1975	\$1,433	20	\$493	\$191,269	12	\$886
1978	1,539	17	496	238,032	11	1,069
1981	1,784	15	552	303,767	10	1,320
1984	2,283	16	699	423,757	11	1,788
1987	2,911	17	882	602,795	13	2,471

<sup>a</sup>Does not include debt of public corporations.

<sup>b</sup>Does not include debt of states' utilities.

Source: For Puerto Rico: Planning Board of Puerto Rico, Economic Report of the Governor (1988). For the states: Economic Report of the President (January 1989), and the Census Bureau's Government Finances, 1975-1987.

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# Federal Legislation Applying to Puerto Rico

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The civil government of Puerto Rico was established under the Organic Act of 1900 (the Foraker Act).<sup>1</sup> In 1917, a new Organic Act was passed (the Jones Act) granting Puerto Rico greater self-government and citizenship.<sup>2</sup> In 1950, legislation was enacted that authorized Puerto Rico to adopt a constitution.<sup>3</sup> The constitution became effective in 1952. The 1950 legislation also modified the 1917 Organic Act to conform it to Puerto Rico's new relationship with the United States and renamed the Organic Act as the Puerto Rican Federal Relations Act.

Other federal legislation enacted since the Organic Act also affects Puerto Rico in many ways. In fact, a search of a database of federal laws mentioning Puerto Rico showed more than 1,019 references.

To narrow our review of federal laws applying to Puerto Rico, we worked with the staff of the Senate Committee on Energy and Natural Resources and others to identify those laws that were seen as the most significant. We conducted our review in seven major areas: income support, health care, taxes, immigration, labor, environment, and trade. In these areas, we identified about 30 major laws. We have briefly summarized these statutes and described how they apply to Puerto Rico. We have not assessed their economic impact or the background behind their enactment. This was done selectively in our March 1981 report, which examined various self-determination issues.

With some exceptions, federal laws in the seven areas we examined apply to Puerto Rico in the same manner as they do to the states. The major exceptions are income support and health care programs and income taxes. Three of the six income support programs we examined are more limited for Puerto Rico, either in funding or eligibility, than they are for the states. Funding for health care under Medicaid is capped for Puerto Rico. For Medicare, the prospective payment rates for inpatient hospital services are based on the cost of Puerto Rican hospitals rather than the national average cost as it is in the states. With regard to both individual and corporate income taxes, federal laws generally do not apply and the operations of U.S. corporations located in Puerto Rico are likewise exempt.

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<sup>1</sup>31 Stat. 77.

<sup>2</sup>P.L. No. 64-368, 39 Stat. 951.

<sup>3</sup>P.L. No. 81-600, 64 Stat. 319, currently found at 48 U.S.C. sect. 731 et seq.

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Table III.1 summarizes these laws and shows Puerto Rico is not always treated as a state under federal law.

**Appendix III  
Federal Legislation Applying to Puerto Rico**

**Table III.1: Comparison of the Applicability of Selected Federal Laws in Puerto Rico and the 50 States**

<b>Law or program</b>	<b>Federal law applies in the same way to Puerto Rico and the states</b>
<b>Income support programs:</b>	
Adult Assistance Program	No (See p. 36)
Aid to Families with Dependent Children	No (See p. 37)
Child Nutrition Act	Yes
Nutrition Assistance (Food Stamps)	No (See p. 38)
Old Age Survivors and Disability Program (Social Security)	Yes
Unemployment Insurance	Yes
<b>Health care programs:</b>	
Medicare	No (See p. 40)
Medicaid	No (See p. 40)
<b>Tax laws</b>	No (See p. 42)
<b>Immigration</b>	Yes
<b>Labor laws:</b>	
Fair Labor Standards Act	Yes
Minimum Wage Act	No (See p. 43)
National Labor Relations Act	Yes
Job Training Partnership Act	Yes
Occupational Safety and Health Act	Yes
Employee Retirement Income Security Act	Yes
Migrant and Seasonal Agricultural Worker Protection Act	Yes
<b>Environmental laws:</b>	
Water Resources Development Act of 1986	Yes
Abandoned Shipwreck Act of 1987	Yes
Superfund legislation	Yes
Clean Water Act	Yes
Clean Air Act	Yes
Solid Waste Disposal Act	Yes
Toxic Substances Act	Yes
Safety of Public Water Systems Act	Yes
Noise Control Act	Yes
Navigation and Navigable Waters Act	Yes
Emergency Planning and Community Right-to-Know Act	Yes
<b>Trade laws:</b>	
Tariff Act of 1930	Yes
Trade Act of 1974	Yes
Agricultural Adjustment Act	Yes
Export Administration Act	Yes
Caribbean Basin Economic Recovery Act	No (See p. 48)

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## Income Support Programs

Puerto Rico participates in some federal income support programs or programs that have similar objectives, but is generally not treated as a state. The federal funding for these programs is capped so that (1) Puerto Rican residents might receive lower levels of assistance than individuals residing in a state or (2) the Commonwealth must bear a higher share of the costs. Some programs are unique to Puerto Rico, and Puerto Rico has set different eligibility requirements and provides a different set of benefits than do many of the states in other programs.

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## Adult Assistance Program

Puerto Rico does not participate in the Supplemental Security Income (SSI) program, which is open-ended and completely federally funded and administered. Instead, Puerto Rico continues the Adult Assistance program, which was superseded by SSI. The Adult Assistance program (42 U.S.C. sect. 1381, note) provides cash assistance to needy, aged, blind, or disabled individuals. The program is jointly funded by the federal and Puerto Rican governments and is administered by Puerto Rico. The federal government pays 75 percent of the costs of Puerto Rico's Adult Assistance benefit and training programs, and 50 percent of other administrative costs. Total expenditures for Adult Assistance, Aid to Families with Dependent Children (AFDC), and foster care (title IV-E assistance) is capped at \$82 million for fiscal year 1989 and thereafter. In 1989, \$11.9 million will be used for adult assistance programs. The average monthly adult assistance payment is \$32 and the U.S. average under SSI is \$362 a month.

The Commonwealth establishes eligibility criteria and benefit levels within the limits of federal law and in accordance with a plan approved by the Department of Health and Human Services (HHS). Federal law requires that Adult Assistance recipients meet eligibility criteria similar to those for SSI—they must be 65 years old, blind, or disabled. The federal government requires the Commonwealth to consider, with some exceptions, all income and resources in determining eligibility. The income standards have different exceptions for the aged, disabled, and blind. These exceptions are as follows:

- For the aged and disabled: Of the first \$80 a month of earned income, the first \$20 plus one-half of the remainder is disregarded.
- For the blind: (a) The first \$85 a month of earned income plus one-half of that in excess of \$85, and (b) for a minimum of 12 but no more than 36 months, other income and resources needed to fulfill an approved plan for self-support are disregarded.

Through federal regulations, HHS sets forth basic resource standards for potential participants. The value of a home, automobile, personal effects, and income-producing property of a potential participant (up to certain limits) may be excluded when determining compliance with resource limitations. Excluding these items, assets cannot exceed \$2,000 per individual in order to qualify for benefits.

## Aid to Families With Dependent Children

AFDC does not treat Puerto Rico as a state. AFDC provides cash payments for needy children (and their caretaker relatives) through state-operated programs that are in accordance with a plan approved by HHS. The federal government shares part of total program costs through a formula grant to the states, Puerto Rico, and other jurisdictions. Federal AFDC funding to states is open-ended, while federal funding is capped for Puerto Rico at \$82 million for fiscal year 1989. The states and Puerto Rico can choose between two federal cost-sharing arrangements. They can use either a prescribed formula or the federal matching rates used for Medicaid. Currently, all states and Puerto Rico use the Medicaid rate, which ranges from 50 to 83 percent depending on per capita income. However, for AFDC, Puerto Rico's Medicaid rate is fixed at 75 percent by federal law, up to the funding cap. The reimbursement rate for the states' and Puerto Rico's administrative costs is 50 percent except for planning, design development, and installation of certain mechanized claims processing and information retrieval systems, which are shared at 90 percent. AFDC is authorized as title IV-A of the Social Security Act, as amended (42 U.S.C. sect. 601 et seq.). It was recently amended by the Family Support Act of 1988 (42 U.S.C. sect. 1305 note).

Puerto Rico, like the states, defines need, establishes income and resource requirements, and sets benefit levels within federal limits. Federal regulations require each state and Puerto Rico to establish a need standard and payment amounts. A need standard is the amount of funds needed to meet daily living requirements. A payment standard is the amount a state or Puerto Rico will pay to a family that has no other countable income. Both the need standard and payment amounts in Puerto Rico are lower than any state or territory.

AFDC assistance is provided to needy children, generally under 18, deprived of support because of their parents' continued absence from home, incapacity, death, or—at state and Puerto Rico's option—unemployment of the principal wage earners. Unlike a number of states, Puerto Rico does not provide assistance to two-parent families in which the primary wage earner is unemployed. But under the Family Support

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Act (42 U.S.C. sect. 607 note (1988)), these states and the Commonwealth will be required to provide such assistance as of October 1, 1992, for 6 months a year. The act also allows emergency services to be funded, and coverage may be extended to “essential persons”—individuals determined essential to a recipient’s well-being. Puerto Rico already provides emergency services.

In addition, countable income—gross income minus disregards for earned and unearned income—must be below the applicable need standard. Federal law mandates a number of income disregards. In addition, Puerto Rico disregards certain other income of a dependent child, including up to 6 months of income from the Job Training Partnership Act.<sup>4</sup> Unearned income is disregarded completely.

In addition to income criteria, AFDC applicants are not allowed to have assets exceeding a specific dollar amount. For example, resources are limited to \$1,000, excluding (1) a home, (2) an automobile with equity value up to \$1,500, and (3) burial plots and funeral agreements valued up to \$1,500 per person. Generally, the gross income of any child or relative claiming AFDC, including certain income of stepparents and the income of an alien’s sponsor deemed available to the applicant, must be below 185 percent of the applicable “need standards” established by the state or area in which the applicant resides.

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### Child Nutrition Act

The Child Nutrition Act of 1966 (42 U.S.C. sect. 1771 et seq.) treats Puerto Rico as a state. Its purpose is to safeguard the health and well-being of the nation’s children and to encourage domestic consumption of agricultural and other foods. The act sets up a special program to encourage milk consumption by children, the school lunch program, and a supplemental food program for women, infants, and children.

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### Nutrition Assistance (Food Stamps)

Puerto Rico is excluded from participation in the Food Stamp program. It has a separate federal Nutrition Assistance program (7 U.S.C. sect. 2028), which is a block grant through which cash is provided to needy households to purchase food. In addition, a small portion of the funds is used to stimulate food production and distribution. The program is administered by Puerto Rico within funding and other limits established

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<sup>4</sup>The Job Training Partnership Act of 1982 (P.L. 97-300) provides grants for job training and related assistance to economically disadvantaged individuals and others who face significant employment barriers.

by federal law and under a plan reviewed and approved annually by the Department of Agriculture.

Unlike federal funding for the Food Stamp program, which is open-ended, federal funding for administrative and benefit costs of food assistance in Puerto Rico was capped at \$825 million per year in 1981. Beginning in 1987, the Congress legislated annual increases to the authorized amount. A funding ceiling of \$937 million is authorized for fiscal year 1990. One hundred percent of benefit costs are paid by the federal government under Puerto Rico's program. Administrative costs are shared on a 50/50 basis between the federal government and Puerto Rico.

The method of calculating Nutrition Assistance benefits is similar to that for the Food Stamp program. The allowable disregards are deducted from gross income to determine countable income and assistance is provided using adjusted Food Stamp tables from 1982.

Puerto Rico allows a standard deduction of \$40 per month plus 20 percent of earned income except in self-employment cases. A combined maximum of up to \$40 per month for shelter, child care, and/or disabled care may also be deducted. In the case of households with elderly or disabled persons, shelter expenses in excess of 50 percent of monthly adjusted income may be deducted. In addition, up to \$100 per month of monthly medical expenses may be deducted for households with elderly or disabled persons.

Benefits are paid in cash and vary monthly. Because the program is capped, total monthly available funds are divided by total monthly required funds to establish an adjustment factor for recipients' benefits. Monthly benefits are adjusted up or down depending on the previous month's factor.

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### Old Age Survivors and Disability Program (Social Security)

Puerto Ricans are treated the same as residents of states under the Old Age Survivors and Disability Program, title II of the Social Security Act (42 U.S.C. sect. 301 et seq.). It is a national program of contributory social insurance in which employees, employers, and the self-employed pay taxes that are pooled in special trust funds. When earnings stop or are reduced because the worker retires, dies, or becomes disabled, monthly cash benefits are paid to partially replace the earnings the family has lost.

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## Unemployment Insurance Program

Puerto Rico is treated as a state under the Unemployment Insurance program, title III of the Social Security Act (42 U.S.C. sects. 502 and 503). The program is a federal-state effort to provide temporary and partial wage replacement to workers unemployed through no fault of their own. Within broad federal guidelines, states establish their own employer tax structure, eligibility requirements, and benefit levels. State imposed employer payroll taxes fund the benefits and federally imposed employer payroll taxes fund program administration.

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## Health Care Programs

Puerto Rico is generally treated as a state under Medicare, with one exception as discussed below. Puerto Rico is not treated as a state under Medicaid. Funding for Medicaid is capped in Puerto Rico and this results in differences in the services Puerto Rico offers and its eligibility requirements.

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## Medicare

The Medicare program is generally administered in Puerto Rico in the same way it is administered in the states. Medicare (42 U.S.C. sect. 1395 *et seq.*) is a federal program that pays much of the health care costs of almost all people aged 65 and over and certain disabled people. The one difference in Puerto Rico's treatment under the Medicare program is that Puerto Rico's prospective payment rate is based on the cost of hospitalization on the island. In the states these costs are based on a national average.

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## Medicaid

The Medicaid program is different in Puerto Rico than it is in the states. Medicaid (42 U.S.C. sect. 1396 *et seq.*) provides funding for medical assistance to low-income persons who are aged, blind, disabled, or members of families with dependent children. The federal government shares part of total program costs through a formula grant available to the states and other jurisdictions, including Puerto Rico. The program is essentially designed and administered by the states and Puerto Rico within federal limits and in accordance with plans approved by HHS. Federal funding for the Medicaid program in the states is open-ended; in Puerto Rico it is capped. A funding ceiling of \$79 million is authorized for fiscal year 1990. The federal financing participation rates for states' Medicaid benefits (except for family planning, which is reimbursed at 90 percent) is based on a formula that takes into account states' per capita income, with limits that may be no lower than 50 percent and no higher than 83 percent. The rate for Puerto Rico is fixed at 50 percent by federal law, up to the funding cap. The sharing rates for administrative

expenses are 75 percent for training, conducting utilization reviews, operating mechanized claims processing, information retrieval, fraud control, and hospital costs-determination systems; 90 percent for establishing the mechanized claims processing and fraud control systems; and 50 percent for the remaining administrative costs.

The states and Puerto Rico must serve the “categorically needy,” which includes recipients of cash assistance through programs such as AFDC and SSI (Adult Assistance in the case of Puerto Rico.) In addition, states and Puerto Rico may opt to serve “medically needy” individuals—those who do not qualify as categorically needy but who cannot afford necessary health care. Puerto Rico has opted to serve

- persons eligible for but not receiving Adult Assistance or AFDC;
- persons in a medical facility who, if they left the facility, would be eligible for cash assistance;
- the spouse of an Adult Assistance recipient who is living with the recipient and who has been determined to be essential to the recipient’s well-being;
- all individuals under age 21 who would be eligible for AFDC except that they do not qualify as dependent children; and
- individuals who would be eligible for Adult Assistance or AFDC if Puerto Rico’s coverage were as broad as allowed under federal law, including families with unemployed parents.

Puerto Rico also extends coverage to (1) pregnant women; (2) medically needy individuals under 21; (3) caretaker relatives; (4) the aged; (5) the blind; (6) the disabled; and (7) eligible spouses of aged, blind, or disabled individuals.

Income eligibility limits for the medically needy differ between states and Puerto Rico (42 C.F.R. 436.811-436.814). For states, the medically needy are limited by regulation to those with income no greater than 133 1/3 percent of the AFDC payment standard for a family of the same size. For Puerto Rico, federal regulations set minimum income limits; the Health Care Financing Administration must approve limits greater than this minimum. For fiscal years 1985-89, Puerto Rico’s approved income limit per month for a family of two was \$400, while 133 1/3 percent of its AFDC payment standard was \$74. Thus, some Medicaid participants in Puerto Rico would not be eligible if the more stringent eligibility limits used in the states were applied.

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## Tax Laws

Puerto Rico is not subject to federal individual or corporate income tax laws. Since 1919, with the passage of the Revenue Act of 1918,<sup>5</sup> Puerto Rico has adopted its own tax law. In this respect, Puerto Rico is similar to a foreign country having a separate taxing authority.

Two provisions in federal tax law are designed to encourage industry and improve the Puerto Rican economy. A federal tax credit for corporations earning income in Puerto Rico has been in effect since the enactment of the Revenue Act of 1921,<sup>6</sup> although the nature of the tax benefit has undergone many changes. One of the most significant tax provisions affecting Puerto Rico is section 936 of the Internal Revenue Code (26 U.S.C. sect. 936).<sup>7</sup> It is designed to encourage U.S. businesses to invest in Puerto Rico and U.S. possessions. The section 936 tax credit has the effect of exempting the income U.S. firms earn from business operations and certain financial investments in Puerto Rico from the federal corporate income tax. The tax credit is equal to the amount of U.S. tax imposed upon that share of its income a corporation derives from its business in Puerto Rico.

Another important tax provision is section 7652(a) of the Internal Revenue Code (26 U.S.C. sect. 7652(a)) governing shipments to the United States. Taxes collected under the internal revenue laws on items produced in Puerto Rico and sold on the U.S. mainland or consumed on the island are to be paid into the Treasury of Puerto Rico. The rate of tax under this provision is the same as that imposed on the 50 states for articles of like nature. There are some limits to this provision. Manufactured items, although actually imported from Puerto Rico, are not treated as Puerto Rican products unless the sum of the cost or value of the materials produced in Puerto Rico, plus the direct cost of processing operations performed in Puerto Rico, equals or exceeds 50 percent of the value of the item at the time it is brought into the United States. Similarly, distilled products are not treated as if they were produced in Puerto Rico unless 92 percent of their alcoholic content is attributable to rum.

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<sup>5</sup>P.L. No. 65-254, 40 Stat. 1057.

<sup>6</sup>P.L. No. 67-98, 42 Stat. 227.

<sup>7</sup>See Puerto Rico's Political Future: A Divisive Issue With Many Dimensions, (GAO/GGD-81-48, March 2, 1981), pp. 69-77, and Welfare and Taxes: Extending Benefits and Taxes to Puerto Rico, Virgin Islands, Guam, and American Samoa, (GAO/HRD-87-60, September 15, 1987), pp. 124-137, for a more detailed discussion of the background of this provision and its significance.

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## Immigration

In 1917, Puerto Ricans were granted U.S. citizenship (8 U.S.C. sect. 1402). Immigration into Puerto Rico is subject to the same provisions as in the states.

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## Labor Laws

Under the seven acts we examined, Puerto Rico is treated the same as a state with the exception of the Minimum Wage Act.

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## Fair Labor Standards Act

Puerto Rico is treated as a state under the Fair Labor Standards Act (29 U.S.C. sect. 201 et seq.). The act provides federal standards concerning minimum wage, overtime pay, child labor, and employer record keeping, among other standards, in order to prevent labor conditions in the United States detrimental to the maintenance of a minimum standard of living necessary for the health, efficiency, and general well-being of workers.

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## Minimum Wage Act

Under the Minimum Wage Act (29 U.S.C. sect. 206), which is part of the Fair Labor Standards Act, special industry committees in Puerto Rico were empowered to gradually increase minimum wages until they reached the federal minimum wage level. When that level was reached, the industry committees became inactive. Currently, Puerto Rico has the same \$3.35 an hour minimum wage as the states.

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## National Labor Relations Act

The National Labor Relations Act, as amended by the Labor Management Relations Act (29 U.S.C. sect. 151 et seq.), treats Puerto Rico as a state. It prescribes certain rights for management and labor with respect to each other and establishes a framework for settling labor-management disputes. The act established the National Labor Relations Board (NLRB), which has a regional office in Puerto Rico, to carry out its provisions. Although the law itself is silent on the question of how and if it applies to Puerto Rico, case law has established that it does apply. (See *NLRB v. Security National Life Insurance Company*, 494 F. 2d 336 (1st Cir. 1974)).

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## Job Training Partnership Act

The Job Training Partnership Act (29 U.S. C. sect. 1501 et seq.) treats Puerto Rico as a state. The purpose of the act is to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and

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other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment.

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Occupational Safety and Health Act

The Occupational Safety and Health Act (29 U.S.C. sect. 652 et seq.) treats Puerto Rico as a state. It is designed to ensure safe and healthful working conditions in the United States. The act authorizes the Secretary of Labor to set mandatory occupational safety and health standards and enforce compliance with those standards. The act also encourages the states to operate, with the Secretary's approval, their own safety and health programs. The Secretary has authorized Puerto Rico to operate such programs.

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Employee Retirement Income Security Act

The Employee Retirement Income Security Act (29 U.S.C. sect. 1001 et seq.) treats Puerto Rico as a state. It authorizes the Secretary of Labor to monitor and regulate employees' pension benefit programs by requiring disclosure; setting standards for pension plan administrators; and providing remedies, sanctions, and ready access to federal courts for participants. The act also requires plans to vest the accrued benefits of employees with significant periods of service, sets minimum plan funding standards, and requires termination insurance.

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Migrant and Seasonal Agricultural Worker Protection Act

The Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. sect. 1801 et seq.) treats Puerto Rico as a state. The act authorizes the Secretary of Labor to require farm labor contractors to register and to comply with disclosure requirements to stop activities detrimental to migrant and seasonal workers.

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Environmental Laws

Generally, federal environmental legislation treats Puerto Rico as a state. However, certain laws also target Puerto Rico for special projects.

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Water Resources Development Act

The Water Resources Development Act of 1986 (33 U.S.C. sect. 2201 et seq.) allots funds for the study and improvement of public waterways. Several projects under this act were intended to improve Puerto Rico's waterways. Specifically, it includes projects to improve the navigation in San Juan Harbor, Fajardo Harbor, and Guayanes Harbor; a project to improve flood control in Rio Puerto Nuevo and a flood control feasibility study in Guayanilla River basin; and the removal of the abandoned vessel "A. Regina" from the waters off Mona Island.

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**Abandoned Shipwreck Act** The Abandoned Shipwreck Act of 1987 (43 U.S.C. sect. 2101 et seq.) gives the states (including Puerto Rico) title to any abandoned vessels embedded in state-owned submerged lands. Puerto Rico gained title to submerged lands around the island, extending out 3 Spanish leagues (10.9 miles) as part of the Organic Act of 1917. (See 48 U.S.C. sect. 749).

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**Superfund Legislation** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, commonly referred to as the Superfund legislation (42 U.S.C. sect. 9601 et seq.), treats Puerto Rico as a state. The act sets guidelines for reporting and responding to the release of hazardous pollutants into the environment.

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**Clean Water Act** Puerto Rico is treated as a state under the Water Pollution Prevention and Control Act (33 U.S.C. sect. 1251 et seq.), commonly known as the Clean Water Act. The objective of the act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Federal agencies are directed to cooperate with state and local agencies to develop comprehensive solutions to prevent, reduce, and eliminate pollution in concert with programs to manage water resources.

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**Clean Air Act** Puerto Rico is treated as a state under the Air Pollution Prevention and Control Act (42 U.S.C. sect. 87401 et seq.), commonly known as the Clean Air Act. The purpose of the act is to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population. This is accomplished by providing for the establishment of minimum air quality standards, initiating national research and development to prevent and control air pollution, and by providing technical and financial assistance to states to facilitate air pollution prevention and control programs.

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**Solid Waste Disposal Act** The Solid Waste Disposal Act (42 U.S.C. sect. 6901 et seq.) treats Puerto Rico as a state. The act is designed primarily to aid state and local governments through technical and financial assistance in reprocessing or disposing of used oil, garbage, sludge, etc. This is accomplished through training grants involving the design, operation, and maintenance of solid waste disposal systems; by setting guidelines and regulating treatment, storage, and disposal of hazardous wastes; and by prohibiting future open dumping of solid waste on land.

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Toxic Substances Act

The Toxic Substances Act (15 U.S.C. sect. 2601 et seq.) treats Puerto Rico as a state. The act authorizes the Administrator of the Environmental Protection Agency (EPA) to require the testing of certain potentially environmentally hazardous substances or mixtures in order to develop data on health and environment effects.

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Safety of Public Water Systems Act

The Safety of Public Water Systems Act (42 U.S.C. sect. 300f et seq.) treats Puerto Rico as a state. It authorizes the EPA Administrator to issue drinking water regulations that specify the maximum allowable contaminant levels in water.

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Noise Control Act

The Noise Control Act (42 U.S.C. sect. 4901 et seq.) treats Puerto Rico as a state. The act requires the EPA Administrator to issue federal noise emission standards to help promote an environment free from noise that jeopardizes people's health and welfare.

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Navigation and Navigable Waters Act

The Navigation and Navigable Waters Act (33 U.S.C. sect. 1401 et seq.) treats Puerto Rico as a state. It authorizes the EPA Administrator to regulate the dumping of all types of materials into ocean waters and to prevent or strictly limit the dumping into ocean waters of any material that would adversely affect human health, the marine environment, ecological systems, or economic opportunities.

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Emergency Planning and Community Right-to-Know Act

The Emergency Planning and Community Right-to-Know Act (42 U.S.C. sect. 11001 et seq.) treats Puerto Rico as a state. The act authorizes the EPA Administrator to prescribe regulations to enforce the reporting and disclosure requirements for substances that he or she has classified or defined in the Code of Federal Regulations as extremely hazardous substances or as hazardous chemicals. It also includes toxic chemicals listed in Committee Print 99-169 of the Senate Committee on Environment and Public Works. The act directs the governor of each state to appoint a State Emergency Response Commission that will develop an emergency plan for the state.

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Trade Laws

Puerto Rico is treated as a state in each of the five pieces of legislation we examined. The various trade acts are administered by different agencies throughout the government. For example, the Departments of the Treasury (Customs), Commerce, and Agriculture all administer various

aspects of federal trade laws. In addition to trade legislation are numerous trade agreements between the United States and other countries regarding a broad spectrum of American manufacturing and produce. These agreements are often item-specific (for example an agreement regarding the export of steel or textiles to the United States). These trade agreements were beyond the scope of our review.

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## Tariff Act of 1930

The Tariff Act of 1930, as amended (19 U.S.C. sect. 1202 *et seq.*) treats Puerto Rico as a state. This act has been amended to include several important trade provisions designed to protect American industry by regulating imports and exports, and prohibiting “unfair methods of competition and unfair acts in the importation of articles into the United States. . . .” (19 U.S.C. sect. 1337b).

The General Tariff Schedule (19 U.S.C. sect. 1202) is one of the primary sections of the Tariff Act of 1930. Puerto Rico is within the general customs territory of the United States. This means that Puerto Rico is treated the same as a state under Customs authority.

Antidumping (19 U.S.C. sect. 1673) and countervailing duties provisions (19 U.S.C. sect. 1671) are two other sections of the Tariff Act of 1930. In both provisions, Puerto Rico is treated as a state. Duties are imposed on imports into the United States to correct unfair practices that benefit imports over domestically produced goods. Antidumping duties are placed on imports that are sold in the United States at a price lower than in the country where they are produced (dumping). Countervailing duties are levied to counteract export or other subsidies provided by the producing country for goods that are imported into the United States. Generally, antidumping or countervailing duties are applied only if an import materially injures or threatens to materially injure a U.S. industry or materially retards the establishment of an industry in the United States.

Two other provisions of the Tariff Act of 1930 treat Puerto Rico different than a state. These provisions authorize Puerto Rico’s legislature to impose a duty on coffee imported into Puerto Rico (19 U.S.C. sects. 1319 and 1319a).

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## Trade Act of 1974

The Trade Act of 1974 (19 U.S.C. sect. 2101 *et seq.*) treats Puerto Rico as a state. It sets out goals and standards for trade agreements between

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the United States and foreign countries. The act also attempts to eliminate trade barriers and protect American industry from unfair and injurious import competition.

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Agricultural Adjustment Act

The Agricultural Adjustment Act (7 U.S.C. sect. 601 et seq.) treats Puerto Rico as a state. The act authorizes the President to impose fees or quotas on imported products that undermine any Department of Agriculture domestic commodity program. The act is designed to prevent imports from interfering with Agriculture's efforts to stabilize or raise domestic agricultural commodity prices.

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Export Administration Act

The Export Administration Act (50 App. U.S.C. sect. 2401 et seq.) includes Puerto Rico in its definition of the United States. The act regulates the export of goods and technology that would prove detrimental to the security of the United States. The act grants the President authority to limit or suspend exports of U.S. commodities and technical data to foreign destinations for any of three specified purposes: to protect the national security, to ensure against an excessive drain of scarce goods, and to further foreign policy objectives.

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Caribbean Basin Economic Recovery Act

The Caribbean Basin Economic Recovery Act (19 U.S.C. sect. 2701 et seq.), commonly known as the Caribbean Basin Initiative, has special provisions applying to Puerto Rico. It authorizes certain U.S. unilateral and preferential trade and tax measures for Caribbean Basin countries and territories. The act benefits Puerto Rico by allowing duty-free treatment of products, a percentage of which was produced or processed in Puerto Rico but sold by one of the Caribbean beneficiary nations. For the purpose of determining whether the foreign product referred to qualifies for duty-free treatment, the Commonwealth of Puerto Rico is defined as a "beneficiary country."

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# Federal Court Cases Since 1980 That Discuss the Legal Status of Puerto Rico

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Before attaining commonwealth status in 1952, Puerto Rico was considered an unincorporated territory of the United States. Since that time there has been much debate, study, and speculation on whether Puerto Rico's status has changed. Although the term "commonwealth" has not been precisely defined, federal courts have discussed the nature and consequences of Puerto Rico's status.

Our 1981 report included a synopsis of the history of Puerto Rico's status in the U.S. courts in the pre-commonwealth period and the post-commonwealth period through 1979.<sup>1</sup> This section focuses on court cases during the 1980s that discuss the legal status of Puerto Rico. It is presented as an update of, and should be read in conjunction with, the discussion in our 1981 report.

During the 1980s, federal courts have rendered a number of decisions on issues where the legal status of Puerto Rico was relevant to the decision. In all but one case, the federal courts treated Puerto Rico as a state. In that case, the Supreme Court upheld a lower reimbursement rate than that for the states under the Aid to Families with Dependent Children program.

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## Cases Treating Puerto Rico as a State

The U.S. Supreme Court, Court of Appeals, and District Court all had cases in the 1980s in which they treated Puerto Rico as a state.

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### Supreme Court Cases

The United States Supreme Court decided several cases in the 1980s in which it treated Puerto Rico as a state. In a 1982 decision,<sup>2</sup> the Court applied the already well-established rule that the fundamental protections of the United States Constitution extended to the citizens of Puerto Rico.<sup>3</sup> The Court applied this rule to the specific issue of the right to

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<sup>1</sup>See *Puerto Rico's Political Future: A Divisive Issue with Many Dimensions*, (GGD 81-48, March 2, 1981) pp. 108-118.

<sup>2</sup>*Rodriguez v. Popular Democratic Party*, 457 U.S. 1 (1982).

<sup>3</sup>See *Torres v. Puerto Rico*, 442 U.S. 465, 469-70 (1979).

vote, and found voting rights of Puerto Rican citizens to be constitutionally protected to the same extent as those of all other United States citizens.<sup>4</sup> This case involved a statute that gave a political party the right to fill an interim vacancy in the Puerto Rico legislature until the next election. The statute, which was similar to those adopted by several states to deal with untimely and unexpected vacancies in the legislature, was challenged on the grounds that it violated the right of members of the other parties to vote for a replacement. The Court found that the mechanism served to “preserve the ‘legislative balance’” until the next general election could be held.<sup>5</sup> Quoting in part from one of its earlier decisions,<sup>6</sup> the Court made the point that “Puerto Rico, like a state, is an autonomous political entity, ‘sovereign over matters not ruled by the Constitution.’”<sup>7</sup>

In another 1982 case, the Court found that Puerto Rico’s sovereignty was analogous to that of a state for purposes of its right to bring a lawsuit on behalf of some of its citizens.<sup>8</sup> The Court allowed Puerto Rico to maintain a suit on behalf of Puerto Rican migrant farm workers against Virginia apple growers for violations of federal law protecting United States workers, including Puerto Ricans, against discriminatory employment practices. The Court applied the same test it would have applied to a state, and concluded that Puerto Rico had a sufficient interest of its own (“quasi-sovereign” interest), beyond the private interest of the aggrieved workers, to allow it to sue on their behalf. This interest consisted of protecting its residents from the harmful effects of discrimination and, alternatively, of pursuing its residents’ interest in the Commonwealth’s participation in the federal statutory employment service scheme.

In a 1986 case, the Court reviewed the constitutionality of a Puerto Rico statute and treated Puerto Rico as a state in applying a rule that gives

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<sup>4</sup>See also *Lopez Lopez v. Aran*, discussed below, in which the United States Court of Appeals for the First Circuit reiterated that Fourth Amendment rights are fundamental constitutional rights, and added that the right to travel was similarly protected.

<sup>5</sup>457 U.S. at 13.

<sup>6</sup>*Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 673 (1974), which in turn had quoted from a lower court decision, *Mora v. Mejias*, 115 F. Supp. 610 (D.P.R. 1973).

<sup>7</sup>457 U.S. at 9.

<sup>8</sup>*Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592 (1982).

binding effect to the construction of Puerto Rico law by Puerto Rico courts.<sup>9</sup> The Court said:

“This would certainly be the rule in a case originating in one of the 50 States. [Citations omitted.] And we believe that Puerto Rico’s status as a Commonwealth dictates application of the same rule.”<sup>10</sup>

In a 1987 case, the State of Iowa asserted that the Extradition Clause of the Constitution did not require Iowa to extradite an individual because the Clause applied only to states, and Puerto Rico was not a state.<sup>11</sup> The court concluded that it did not have to decide whether the Extradition Clause applied to Puerto Rico because the Extradition Act, a federal statute implementing the Clause, did apply to Puerto Rico and required Iowa to extradite the individual. The court held that the Extradition Act, which requires extradition of fugitives at the request of a “Territory,” as well as a “State,” applied to Puerto Rico as a commonwealth. The court reasoned that when Puerto Rico’s status was changed from that of territory to that of commonwealth, the legislation that accomplished the change “did not remove from the Government of the Commonwealth any power to demand extradition which it had possessed as a Territory, for the intention of that legislation was ‘to accord Puerto Rico the degree of autonomy and independence normally associated with States of the Union.’”<sup>12</sup>

In a 1988 Supreme Court decision, the Court treated Puerto Rico as a state in holding that no federal law preempted Puerto Rico’s power to regulate oil prices.<sup>13</sup> The Court said:

“Although Puerto Rico has a unique status in our federal system . . . the test for federal pre-emption of the laws of Puerto Rico at issue here is the same as the test . . . for pre-emption of the law of a state.”<sup>14</sup>

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<sup>9</sup>Posadas De Puerto Rico Assoc. v. Tourism Co., 478 U.S. 328 (1986).

<sup>10</sup>Id. at 339.

<sup>11</sup>Puerto Rico v. Branstad, 483 U.S. , 107 S. Ct. 2802 (1987).

<sup>12</sup>483 U.S. at , 107 S. Ct. at 2809.

<sup>13</sup>Puerto Rico Department of Consumer Affairs v. Isla Petroleum Corp., 485 U.S. , 56 U.S.L.W. 4307 (1988).

<sup>14</sup>56 U.S.L.W. at 4308.

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## Appellate Court Cases

The U.S. Court of Appeals for the First Circuit decided several cases in the 1980s in which it treated Puerto Rico as a state. In most of these cases, the court had to determine whether particular federal statutes applied in the same way as they would have applied to states, and found that they did.

In a 1981 case, the court found no reason to treat Puerto Rico in a manner different from the way it would treat a state. The court held that section 3 of the Sherman Antitrust Act,<sup>15</sup> which prohibits restraints of trade “in any Territory of the United States,” applied to Puerto Rico in its commonwealth status.<sup>16</sup> The court said:

“It is fair to assume that the framers of the Sherman Act, had they been aware of the FRA [Federal Relations Act] and subsequent Constitutional developments, would have intended that Puerto Rico be treated as a ‘state’ under the Act, once Commonwealth status was achieved.”<sup>17</sup>

In a 1985 case involving evidence obtained by wiretapping, the court found that the federal law that allowed evidence of recorded telephone conversations meeting statutory standards,<sup>18</sup> was the controlling law for federal prosecutions in Puerto Rico.<sup>19</sup> The court held that the Constitution of Puerto Rico, which prohibits wiretapping and the use of wiretapped evidence in court, did not apply. In comparing Puerto Rico to a state, the court said:

“While the creation of the Commonwealth granted Puerto Rico authority over its own local affairs, Congress maintains similar powers over Puerto Rico as it possesses over the federal states. [Citation omitted.] The congressional intent behind the approval of the Puerto Rico Constitution was that the Constitution would operate to organize a local government and its adoption would in no way alter the applicability of United States laws and federal jurisdiction in Puerto Rico. [Citations omitted.] When Congress approved the Constitution of Puerto Rico it was simultaneously enacted: ‘The statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States. . . .’ 48 U.S.C. sect. 734.”<sup>20</sup>

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<sup>15</sup>15 U.S.C. sect. 3.

<sup>16</sup>*Cordova v. Chase Manhattan Bank N.A.*, 649 F.2d 36 (1st Cir. 1981).

<sup>17</sup>649 F. 2d at 42.

<sup>18</sup>18 U.S.C. sect. 2510 *et seq.*

<sup>19</sup>*United States v. Quinones*, 758 F.2d 40 (1st Cir. 1985).

<sup>20</sup>758 F.2d at 43.

In a civil rights case in 1985,<sup>21</sup> the court viewed Puerto Rico as a state in determining that certain residency rules of the Amateur Sports Council of Puerto Rico did not constitute “state” action that violated the Fourteenth Amendment and a federal statute.<sup>22</sup> The court found that Commonwealth actions are to be treated as state actions when applying federal civil rights law.

In another civil rights case in 1987, in which two Puerto Rican police officers were convicted of assaulting and beating three men, the court held that federal statutes<sup>23</sup> making it a crime under certain conditions to deprive someone of their civil rights applied to Puerto Rico.<sup>24</sup> The court went on to hold that, just as would be the case with a state, the defendants could be prosecuted under both federal and local law, without violating the constitutional prohibition against trying a person twice for the same crime (double jeopardy), because Puerto Rico and the United States were separate sovereign entities.

“Although the legal relationship between Puerto Rico and the United States is far from clear and fraught with controversy, it is established that Puerto Rico is to be treated as a state for purposes of the double jeopardy clause.”

Finally, in a 1988 case, the court concluded that the Immigration and Naturalization Service’s policy of seizing airline passengers’ tickets as a matter of course, before completing an initial inspection and without any articulable suspicion that the ticket holder was an illegal alien, violated the Fourth Amendment, which prohibits unreasonable searches and seizures.<sup>25</sup> The case involved a passenger at a Puerto Rico airport, and the court found that both the Fourth Amendment and the right to travel freely applied to Puerto Rico. In a partially concurring opinion, one judge said:

“Puerto Rico’s constitutional status is irrelevant to the validity of the challenged process because the requirements of the Fourth Amendment are as fully applicable in Puerto Rico as in the States.”<sup>26</sup>

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<sup>21</sup>18 U.S.C. sect. 241, 242 (1982).

<sup>22</sup>42 U.S.C. sect. 1983.

<sup>23</sup>18 U.S.C. sect. 241, 242 (1982).

<sup>24</sup>United States v. Lopez Andino, 831 F.2d 1164 (1st Cir. 1987).

<sup>25</sup>Lopez Lopez v. Aran, 844 F.2d 898 (1st Cir. 1988).

<sup>26</sup>831 F.2D at 1168.

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## District Court Cases

In a 1980 decision of the United States District Court for the District of Puerto Rico, Puerto Rico received the same treatment a state would have received. The court did not, however, compare Puerto Rico with a state. The court found that the Commerce Clause of the Constitution, which gives the Congress authority to regulate commerce with foreign nations and among the states, applied to Puerto Rico no matter what its technical status.<sup>27</sup> Citing a Supreme Court decision,<sup>28</sup> the court said that it was settled that:

“[R]egardless of the nature of the particular constitutional relationship between Puerto Rico and the United States, the Territorial Clause [which empowers Congress to regulate territories], is a source of congressional power over the island.”<sup>29</sup>

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## Cases Treating Puerto Rico in a Manner Different From a State

We found only one case during the 1980s in which a federal court treated Puerto Rico different from the way it would have treated a state. The case was a Supreme Court case in which Puerto Rico challenged its rate of reimbursement under AFDC.<sup>30</sup> Puerto Rico argued that the reimbursement rate violated the Fifth Amendment’s equal protection guarantee because it was lower for Puerto Rico than for the states.

The court said that the Congress, which was empowered under the Territory Clause of the Constitution to make all necessary rules and regulations respecting a territory,<sup>31</sup> could treat Puerto Rico differently from states. Citing an earlier Supreme Court decision,<sup>32</sup> the Court reiterated: “Congress . . . may treat Puerto Rico differently from States so long as there is a rational basis for its actions.”<sup>33</sup> The court cited three rational bases for the statutory classification of Puerto Rico under AFDC:

“Puerto Rican residents do not contribute to the federal treasury; the cost of treating Puerto Rico as a state under the statute would be high; and greater benefits could disrupt the Puerto Rican economy.”<sup>34</sup>

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<sup>27</sup>Sea-Land Service, Inc. v. Municipality of San Juan, 505 F. Supp. 533, 539 (D.P.R. 1980).

<sup>28</sup>Harris v. Rosario, discussed below.

<sup>29</sup>505 F. Supp. at 544.

<sup>30</sup>Harris v. Rosario, 446 U.S. 651 (1980).

<sup>31</sup>U.S. Const., Art. IV, sect. 3, cl. 2.

<sup>32</sup>Califano v. Torres, 435 U.S. 1 (1978).

<sup>33</sup>446 U.S. at 651-52.

<sup>34</sup>Id. at 652.

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## Another Relevant Case

In a 1981 case, the First Circuit Court of Appeals found that a statute that applied to “dependencies and insular possessions of the United States” continued to apply to Puerto Rico after it became a commonwealth.<sup>35</sup> The statute was 12 U.S.C. sect. 632, which gives federal district courts jurisdiction over certain banking transactions in “dependencies or insular possessions of the United States.” In holding that the statute applied to Puerto Rico, the court said:

“Puerto Rico’s territorial status ended, of course, in 1952. Thereafter it has been a Commonwealth with a particular status as framed in the Puerto Rican Federal Relations Act. Act of July 13, 1950, P.L. 600, sect. 4, 64 Stat. 319; see also Act of July 3, 1952, P.L. 447, 66 Stat. 327. However, nothing in this legislation expressly or by necessary implication removed Puerto Rico from the reach of section 632. While Puerto Rico’s new status rendered the words ‘dependency or insular possession’ somewhat obsolete as to it, the language was nonetheless still sufficient, given the historical context, to encompass the reorganized Commonwealth.”<sup>36</sup>

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<sup>35</sup>First Federal Savings and Loan Association of Puerto Rico v. Ruiz de Jesus, 644 F.2d 910 (1st Cir. 1981).

<sup>36</sup>Id. at 911.

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# Bibliography

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We developed a selected bibliography based on a variety of sources. Following is a synopsis of several books and reports as well as listings of publications prepared by others.

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## Annotated Bibliography

Carr, Raymond. Puerto Rico: A Colonial Experiment. New York: Vintage Books, 1984.

Raymond Carr presents a historical discussion of the relations between the United States and Puerto Rico. It begins with a description of the colonial period and the evolution of Puerto Rico's present relationship with the United States. Subsequent sections deal with contemporary issues, such as the Puerto Rican political parties and a status referendum. The last chapter treats events and issues between the election campaign of 1980 and mid-1982. This last chapter illustrates attitudes during an uneasy period in the relationship between the United States and Puerto Rico. In part, this chapter is concerned with the party politicians' behavior in Puerto Rico and also with the way that these politicians and the establishment in general perceived the impact of changes in national policies under the Reagan administration upon the well-being of the island.

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Curet Cuevas, Eliezer. Puerto Rico: Development by Integration to the U.S. Rio Piedras, Puerto Rico: Editorial Cultural, 1986.

This study explains (1) the economic development of Puerto Rico, (2) the nature and causal relations of the rapid rate of economic growth experienced from 1950 to 1974, and (3) the slowdown that has been observed since then. It examines the factors that have shaped that growth to test the hypothesis that the results were determined by the nature of the development strategy: (1) the industrial specialization for export markets, (2) the reliance on external sources for capital, technology, raw materials, and energy, and (3) the integration with the U.S. economy with respect to financial, labor, and goods markets. It describes the testing of the hypothesis by using an econometric model. This model disclosed other factors that are important determinants of economic growth patterns, such as: (1) the inputs of labor and capital, (2) tax exemption, (3) the government fiscal and economic policies, (4) demographic changes, and (5) the value of imported oil.

The author discusses the events since 1973, which have been interpreted to represent a very low net long-term growth trend. It was argued that these trends cannot be reversed without substantial changes in the economic and political structure. The author concludes that political stability and generally sound economic policies and management in Puerto Rico up to 1968 contributed effectively to economic growth. On the other hand, he concludes that political instability and mismanagement of the economy since then have been an important determinant of Puerto Rico's economic stagnation.

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Dietz, James L. Economic History of Puerto Rico: Institutional Change and Capitalist Development. Princeton: Princeton University Press, 1986.

James Dietz contributes to interpretations of Puerto Rico's political economic history. In particular, he examines the evolution of the island's industrialization strategy from the early 1950s to the mid-1980s. The author discusses Puerto Rico's rapid economic growth as a result of Operation Bootstrap, which was designed to attract capital-intensive industries through tax exemption. In addition, the author describes how employment generation, the expansion of public debt to finance social welfare programs, and unimpeded migration of surplus workers to the mainland contributed to Puerto Rico's economic history.

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Morales Carrion, Arturo. Puerto Rico: A Political and Cultural History. New York: W. W. Norton and Company, Inc., 1983.

This book discusses the social, political and cultural factors that have shaped Puerto Rico and given it a distinctive character. A prime consideration of this book is to establish a more balanced perspective of the United States' relationship with the island and of what Puerto Rico constitutes as a people (its Hispanic heritage) and as a separate and distinct Caribbean entity. This book is divided into three parts. The first deals with the formative centuries, the arrival of Spanish civilization, and the Puerto Rican struggle for self-determination. The second deals with the twentieth century—colonial or dependent relationship with the United States and the evolution of Puerto Rico's cultural profile, including literary and artistic traditions. And the third deals entirely with Puerto Rico's cultural expression, its folk traditions, its art and literature from its Indian heritage to the present.

Puerto Rico Federal Affairs Administration. Documents on the Constitutional Relationship of Puerto Rico and the United States, edited by Marcos Ramirez Lavandero, Washington, D.C.: 1988.

These documents are an updated compilation of the historical judicial decisions and legislative changes on Puerto Rico's constitutional development and its relationship with the United States. Bibliographies of books and articles, Supreme Court cases, and some First Circuit Court cases related to Puerto Rico are included. This reference book provides information on the leading cases that deal with the legal implications of the Commonwealth status and the territorial status of Puerto Rico. In addition, it contains a section on the amendments to the Federal Relations Act and documents related to proposed modifications or clarifications of Commonwealth status. It also contains United Nations documents on Puerto Rico as well.

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Thomas, Arnold Norman. Associated Statehood in the Leeward and Windward Islands: A Phase in the Transition to Independence (1967-1983). New York: City University of New York, 1987.

Arnold Norman Thomas applies the principle of self-determination to the Caribbean mini-states of Antigua, St. Kitts-Nevis-Anguilla, Dominica, Grenada, St. Lucia, and St. Vincent. The smaller islands, following independence of the larger West Indian territories, were not considered to be economically viable for independence. The mini-state dilemma was solved through the constitutional device of "associated statehood," which provided the islands with full control over internal affairs while the United Kingdom retained responsibility for defense and external affairs. As a phase in the transition to independence, associated statehood was also regarded as a strategy for creating the conditions prerequisite to independence.

There are six main themes: (1) the role of the international system in determining the status of territories, (2) plans to devise schemes for the decolonization of the West Indies, (3) the status of associated statehood in the international system, (4) the debate over economic viability, (5) associated statehood as a transitional phenomenon, and (6) the place of small states within international systems.

The study is divided into four parts. The first part provides a background to the choice of associated statehood. The second part, analyzes the experience of statehood in the Caribbean (1967-83). The third part

lays out the debate on economic viability in the transition to independence for these islands. And the fourth part assesses the place of small states within the international system.

Several conclusions are offered on the statehood phenomenon:

- The associated statehood was designed more to slow down the pace of decolonization at a time when the United Kingdom was hard-pressed in the United Nations, and less over the presumed economic nonviability of the associated states.
- The associated statehood failed to create economic viability but provided the islands with experience in international affairs through participation as members of the Caribbean Community and Common Market.
- The transition to independence was not based on presumed economic viability but on the more pragmatic premise that independent status offered more opportunities and greater access to international aid.
- The islands' small size and economic viability are no longer impediments to independence because the criteria for viability had been eroded within a short space of time.

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U.S. General Accounting Office. Experiences of Past Territories Can Assist Puerto Rico Status Deliberations. GGD-80-26. Washington, D.C.: March 7, 1980.

Procedures and terms established by the Congress in admitting states and granting independence are historically analyzed. Historically, the Congress has been guided by tradition, but it has also been adaptable when considering and legislating changes to the status of territories. The Congress' broad authority and the diversity of each applicant have produced some patterns and many variations in admitting the 37 states beyond the original 13 and granting independence to the Philippines.

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U.S. General Accounting Office. The Challenge of Enhancing Micronesian Self-Sufficiency. ID-83-1. Washington, D.C.: January 25, 1983.

Our report discusses the problems that the governments of Palau, Micronesia, and the Marshall Islands face in becoming more self-sufficient and the substantial technical assistance these governments need to enhance their capabilities to overcome these problems.

We found that their economies are dependent upon the transfer of U.S. funds. Geographic, social, and public policy constraints and other factors limit the growth of private-sector economy. Resources to meet increasing demands on health and education services are limited. Micronesia is experiencing public administration problems in financial and personnel management and human resource development.

Because the United States will have a continuing interest in the long-term development of Micronesia, we made recommendations to the Secretary of the Interior to help accomplish this objective, such as conducting assessments of technical assistance requirements of the Micronesian governments and developing an action plan to guide the provision of all United States and other technical assistance to the governments.

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U.S. General Accounting Office. Issues Affecting U.S. Territory and Insular Policy. GAO/NSIAD-85-44. Washington, D.C.: February 7, 1985.

Information and views are provided on the current state of affairs in federal-territorial relations in terms of federal policies, laws, programs, and organization.

We found the issues involving federal-territorial relations, such as appropriate levels of representation, treatment under federal laws and programs, and economic and social development strategies, are becoming increasingly complex with no simple solutions. We believe these issues are likely to require greater congressional attention and to stimulate debate on whether further policy guidance is needed to clarify and strengthen federal-territorial relations. Many territorial leaders support the concept of a high-level, interagency group to handle policy-related matters and address major territorial concerns.

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U.S. General Accounting Office. U.S. Territory and Insular Policy. Statement of Joseph E. Kelley, Associate Director, National Security and International Affairs Division. Washington, D.C.: April 10, 1986.

We testified on several aspects of U.S.-territorial relations, specifically: (1) the background and history of U.S. territorial policy, (2) the extent to which U.S. foreign and domestic policies consider the potential impact on the territories, and (3) whether federal policies are meeting U.S. policy objectives and territorial needs.

We found that: (1) while some of the territories are currently reexamining their relationship with the United States, the federal government has adopted a flexible approach in dealing with the political aspirations of territorial inhabitants, and, as a result, each territory has freely chosen different types of political status based on its unique characteristics and needs; (2) although the United States has consistently encouraged economic independence in the territories and has provided financial and technical assistance amounting to millions of dollars, most of the territories have made limited progress toward economic self-reliance; and (3) significant increases in economic self-reliance remain unlikely in the foreseeable future because many indigenous constraints limit access to outside investment.

U.S. General Accounting Office. Welfare and Taxes: Extending Benefits and Taxes to Puerto Rico, Virgin Islands, Guam, and American Samoa. GAO/HRD-87-60. Washington, D.C.: September 15, 1987.

Our report analyzes the potential effects of fully extending Supplemental Security Income, Aid to Families with Dependent Children, Medicaid, foster care, Child Support Enforcement, and Food Stamp benefits and federal income taxes, to Puerto Rico, the Virgin Islands, Guam, and American Samoa for 1984.

We found that, for Puerto Rico: (1) federal costs would more than double—increasing an estimated \$1 billion—due to higher benefits, more recipients, and greater cost-sharing; (2) the Commonwealth's share of program costs would decrease about 38 percent; and (3) federal tax revenues would have increased in the short term by an estimated \$2.4 billion, but might decrease over time because of lost business tax incentives. Puerto Rican officials generally supported extending most program benefits, but opposed extending federal income taxes.

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