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THE ORIGINS OF THE JONES ACT OF PUERTO RICO

by

STEPHANIE MERCEDES CASTILLO

A master's thesis submitted to the Graduate Faculty in Liberal Studies in partial fulfillment of  
the requirements for the degree of Master of Arts, The City University of New York

2019



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MERCEDES  
CASTILLO

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THE ORIGINS OF THE JONES ACT OF PUERTO RICO

by

Stephanie Mercedes Castillo

This manuscript has been read and accepted for the Graduate Faculty in Liberal Studies in satisfaction of the thesis requirement for the degree of Master of Arts.

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## ABSTRACT

The origins of the Jones Act of Puerto Rico

by

Stephanie Mercedes Castillo

Advisor: Tomohisa Hattori

After the Spanish-American War that ended in 1898, Puerto Rico was given to the United States by Spain as a war booty, becoming a US colony. The first law ever created by the United States to control Puerto Rico was the Foraker Act (also known as the Organic Act of 1900). This established a civilian government in Puerto Rico. It also extended the federal government rulings to the island. After its creation, the Puerto Rican population began to wonder what their political status was since nothing was concretized until the Jones Act was signed. The Merchant Marine Act of 1920, otherwise known as the Jones Act, is the foundation for protectionist cabotage laws that administer shipping in the United States and it is imposed in the mainland territories across the globe (Hawaii, Puerto Rico, Guam and Alaska). “Cabotage” refers to the shipping of goods between two points within a country. The Jones Act had two purposes: it declared that Puerto Ricans were American citizens; and at the same time, it limited Puerto Rico’s commerce by only allowing it to sell its products to the United States. Even though Puerto Ricans are lawfully American citizens, they hold a second-class American citizenship in a social aspect. This thesis is going to examine why and how the Jones Act came into existence.

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Dedico esta tesis a mi mamá, mi papá y a mi isla. Infinitas gracias a Lenny, Naomi, Lucelenie, Juan Antonio, Edwin y Gibram, quienes me enseñaron que no todas las familias requieren vínculos sanguíneos.

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## I. Introduction

After the Spanish-American War that ended in 1898, Puerto Rico was given to the United States by Spain as a war booty, becoming a US colony. The first law ever created by the United States to control Puerto Rico was the Foraker Act (also known as the Organic Act of 1900). This established a civilian government in Puerto Rico.<sup>1</sup> It also extended the federal government rulings to the island. After its creation, the Puerto Rican population began to wonder what their political status was since nothing was concretized until the Jones Act was signed.<sup>2</sup> The Merchant Marine Act of 1920, otherwise known as the Jones Act, is the foundation for protectionist cabotage laws that administer shipping in the United States and it is imposed in the mainland territories across the globe (Hawaii, Puerto Rico, Guam and Alaska). “Cabotage” refers to the shipping of goods between two points within a country. The Jones Act had two purposes: it declared that Puerto Ricans were American citizens; and at the same time, it limited Puerto Rico’s commerce by only allowing it to sell its products to the United States.<sup>3</sup> Even though Puerto Ricans are lawfully American citizens, they hold a second-class American citizenship in a social aspect. Mahmood Mamdani’s book *Citizen and Subject* explains the difference between being a citizen and a subject within colonial relations.<sup>4</sup> Also, the author elucidates about the indirect rule of the subject population of natives that constituted decentralized despotism.

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<sup>1</sup> Foraker Act (Organic Act of 1900). (2011, June 22). Retrieved February 7, 2019.

<sup>2</sup> History, Art & Archives, U.S. House of Representatives. (March 31, 2019). *Puerto Rico*. Retrieved February 7, 2019.

<sup>3</sup> History, Art & Archives, U.S. House of Representatives. (March 31, 2019). *Puerto Rico*. Retrieved February 7, 2019.

<sup>4</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the Legacy of Late Colonialism*. Princeton: Princeton University Press. pp.17-18.

Mamdani explains that decentralized despotism was the action of excluding the ‘uncivilized’ from the rights of citizenship through direct rule.<sup>5</sup> In other words, the tribal population was subordinated through the power and authority that was exercised by local chiefs as handed to them by colonialists.

Puerto Ricans were indeed not full citizens but subjects, as long as they lived in the island, which was ruled by the governor, who ruled over the island population: therefore, decentralized despotism. One major difference between Puerto Rico under the Jones Act and the African colonial rule that Mamdani analyzes is the system through what it is imposed. The election of the governor as opposed to the colonial appointment, which makes this decentralized rule not decentralized despotism but decentralized republican colonialism was central in the American expansionism in Puerto Rico. Although some find the act is outdated,<sup>6</sup> others find it essential to preserve the American national security and economy.<sup>7</sup> Because colonization has been condemned by the international law, Puerto Rico’s political status changed in 1952 from colony to commonwealth. This thesis looks at the origin of U.S. expansionism in Puerto Rico. Colonial possessions served as markets for exports and as suppliers of raw materials to the mother country. Furthermore, manufacturing was forbidden in colonies, and all commerce between colony and mother country was held to be a monopoly of the mother country.<sup>8</sup> The key question of this thesis is the following: why and how did the Jones Act come into existence?

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<sup>5</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the Legacy of Late Colonialism*. Princeton: Princeton University Press. p.17.

<sup>6</sup> Dennis, N. A. (2017, September 25). The Jones Act: The Law Strangling Puerto Rico. Retrieved January 23, 2019.

<sup>7</sup> Willis, L. I. (2017, November 1). Support The Jones Act [Letter to U.S House of Representatives]. Retrieved February 7, 2019.

<sup>8</sup> Teschke, B. (2011). *The Myth of 1648: Class, Geopolitics, and the Making of Modern International Relations*. London: Verso.

On one hand, the American shipping industry states that the Jones Act protects national interests, while on the other hand, the people of Puerto Rico and other overseas American territories state that it makes their lives unnecessarily expensive, as the products that arrive in the island are costlier than in the mainland. Furthermore, the fact that the Jones Act was lifted for ten days when Hurricane Maria destroyed Puerto Rico so international ships rather than American vessels could deliver goods and help demonstrates how detrimental this act is to the island even today.<sup>9</sup> This thesis is going to examine why and how the Jones Act came into existence in the first place.

The general approach I take here regards Puerto Rico as a colonial form of US imperialism. In particular, I will use Emmanuel's unequal exchange theory, which explains how unequal exchange was established by the Jones Act. His theory is characterized by a formulation of the world economy in terms of the center and the periphery, where capitalism is faced with the dilemma of maintaining its rate of profit by keeping the standard of living of the masses at a very low level (with low wages), which means depriving itself of scope for profitable investment inside the home country. According to Emmanuel, the only way out is to undertake investment abroad, which calls for imperialist protection.<sup>10</sup> Emmanuel's version of unequal exchange by considering wages as an endogenous variable showed that unequal exchange allowed capitalist countries to protect profits. Samir Amin's accumulation theory is also going to be used in this thesis to demonstrate how the U.S benefits from this protectionist law as Puerto Rico can only sell what it produces (mainly raw products) to the United States. This is a cheaper and faster way for the U.S to produce manufactured goods. To him, the dominance of foreign capital in less developed

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<sup>9</sup> Chokshi, N. (2017, September 28). Trump Waives Jones Act for Puerto Rico, Easing Hurricane Aid Shipments. Retrieved February 21, 2019.

<sup>10</sup> Emmanuel, A., & Pearce, B. (1972). *Unequal exchange: A study of the imperialism of trade*. London: NLB. p. 185.

countries means disproportionate export activity. Colonized countries thus incur heavy debts to core countries, become necessarily dependent on them, and become linked with the world capitalist system.<sup>11</sup> However, Puerto Rico is not even a less developed country because the American colonization of Puerto Rico has not ended. This thesis is going to examine how the American colonization of Puerto Rico established unequal exchange by the Jones Act, alongside the Foraker Act since these are the two laws that perpetuate Puerto Rico's dependence on the United States. In Emmanuel's words, most imperialisms are mercantile in character.<sup>12</sup> With different sections explaining the different historical and socioeconomic aspects that paved the way for the creation of the Jones Act, this thesis is going to treat the colonizer as industrial country and the colony as non-industrial place to be taken advantage of via unequal exchange and trade. Samir Amin, a recognized political economist, created the theory of primitive accumulation, which sees the international activity of trade as an exchange of products of unequal value, or more precisely, whose prices of production are unequal. This means that the reward becomes unequal. Amin's primitive accumulation analysis clarifies the purposes in the colonies and therefore, will illustrate the origins of the Jones Act. The primitive accumulation is the process by which pre-capitalist modes of production, such as feudalism or slavery, are transformed into the capitalist mode of production.

This thesis also examines David Ricardo's comparative advantage theory. This theory claims that the international division of labor resulting from the specific action of economic forces through the capitalist world market realizes conditions of production and exchange that are based on the relative natural advantages of the countries participating in exchange.<sup>13</sup> It is usually deduced

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<sup>11</sup> Amin, S. (1976). *Imperialism and Unequal Development*. New York, NY: Monthly Review Press. p.32.

<sup>12</sup> Emmanuel, A., & Pearce, B. (1972). *Unequal exchange: A study of the imperialism of trade*. London: NLB. p.172.

<sup>13</sup> Emmanuel, A., & Pearce, B. (1972). *Unequal exchange: A study of the imperialism of trade*. London: NLB. p. 274.

from this claim that the capitalist international division of labor makes advantageous exchanges possible for the poor countries just as for the rich and enables maximum production to be obtained, taking account of the factors of production available on the world scale and their geographical localization.<sup>14</sup> Understanding Ricardo's theory and its critics it is the base of seeing the international disadvantage that the contemporary trade economy has, which is traced back to the mere evolution of the mechanisms created by the colonizer countries to stay at the top. Likewise, this thesis offers a section of the theories of colonialism, which explain how the colonial form of imperialism evolved into the contemporary capitalist system through the birth of monopolies. The fact that the countries of the periphery were in a pre-capitalist socioeconomic system and then drastically incorporated into the international economy was the first unequal direction that these countries were put in.

Regarding colonialism, author Anthony Anghie provided an insightful explanation of the international legal order.<sup>15</sup> In his book, he explains how positivist international law disfranchised and subordinated non-European peoples. Positivist international law, according to Anghie, distinguished between civilized states and non-civilized states and asserted further that international law applied only to the sovereign states which comprised the civilized “family of nations.”<sup>16</sup> His work focuses on the complicity between legal positivism and colonialism.

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Ricardo, D., Sraffa, P., &. (1823). *The Works and Correspondence of David Ricardo* (Vol. 4). Cambridge: Cambridge U.P. for the Royal Economic Society.

<sup>14</sup> Emmanuel, A., & Pearce, B. (1972). *Unequal exchange: A study of the imperialism of trade*. London: NLB. p. 274.  
Ricardo, D., Sraffa, P., &. (1823). *The Works and Correspondence of David Ricardo* (Vol. 4). Cambridge: Cambridge U.P. for the Royal Economic Society.

<sup>15</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. p.38.

<sup>16</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. p.38.

Specifically, Anghie explains how international law jurists used legal positivism to justify colonialism or in their words, “acquisition of territory.” In his book Anghie said that

Although the traditional view of the discipline downplays the importance of the colonial confrontation for an understanding of the subject as a whole, it is clear that much of the international law of the nineteenth century was preoccupied with colonial problems. It is explicitly recognized that special doctrines and norms had to be devised for the purpose of defining, identifying and placing the uncivilized, and this was what the jurists of the period proceeded to do when listing among the modes of acquiring territory, ‘conquest,’ and ‘cession by treaty.’<sup>17</sup>

Also, Anghie analyzes the constitutive effect of colonialism on sovereignty. In his words, “colonialism was not an example of the application of sovereignty; rather sovereignty was constituted through colonialism.”<sup>18</sup> The violence of positivist language in relation to colonialism is hard to overlook. Positivists developed an elaborate vocabulary for denigrating non-European people, presenting them as suitable objects for conquest, and legitimizing the most extreme violence against them, all in the furtherance of the civilizing mission, the discharge of the white man’s burden. Despite this, it is incorrect to see the colonial encounter as a series of problems that were effortlessly resolved by the simple application of the formidable intellectual resources of legal positivism. Rather, I use Anghie’s argument that explains that legal positivists were engaged in an ongoing struggle to define, subordinate and exclude the native so that they could justify the colonial rule legally to explain the origins of the Jones Act. Likewise, Anghie stated that “colonial problems posed a significant and, in the end, insuperable set of challenges to legal positivism and its pretensions to develop a set of doctrines which could coherently account for the native

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<sup>17</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. p.38.

<sup>18</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. p.38.

personality, a task that was crucial to the positivist self-image.”<sup>19</sup> Development was also a concept that was distorted under the positivist legal purview to ameliorate the colonial doings in the nineteenth century that even created the terms “developed” and “underdeveloped” for colonist and colonized countries that still exist in our contemporary vernacular.<sup>20</sup> In this way, Anghie’s arguments are going to be used to criticize legal positivism.

On that same note, Mamdani analyzes colonialism with his examination of the British ‘indirect rule,’ the French ‘association,’ or ‘institutional segregation’ and thus, the difference between subjects and citizens.<sup>21</sup> In Mamdani’s words, “citizenship would be a privilege of the civilized; the uncivilized would be subject to an all-around tutelage. They may have a modicum of civil rights, but not political rights, for a propertied franchise separated the civilized from the uncivilized. The resulted vision was summed up in Cecil Rhode’s famous phrase ‘Equal rights for all civilized men.’”<sup>22</sup> Taking into consideration Anghie’s legal positivist perspective, Mamdani describes how it was done in colonial Africa. In light of this kind of practice, Anghie is a postcolonial legal theorist that criticizes and analyzes the effect of legal positivism on colonists’ justification of colonies and colonial rule.

Positivist law was used to push institutional segregation in colonial Africa. Mamdani examined how "customary law" was used by the British to help their appointed local tribal rulers’ rule. And this customary law was not really an authentic codification of African tribal law or

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<sup>19</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. p.38.

<sup>20</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. pp.203-204.

<sup>21</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.7.

<sup>22</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.17.

customs, according to Mamdani. General Smuts, a member of the British war cabinet and a framer of the League of Nations is quoted in Mamdani's book stated

If Africa has to be redeemed so as to make her own contribution to the world, then we shall have to proceed on different lines and evolve a policy which will not force institutions into an alien European mold but will preserve her unity with her own past and build her future progress and civilization on specifically African foundations. The British Empire does not stand for the assimilation of its peoples into a common type, it does not stand for standardization, but for the fullest freest development of its peoples along their own specific lines.<sup>23</sup>

To further illuminate on this institutional segregation argument, Anghie stated

The “fullest freest development of its peoples” as opposed to their assimilation into “a common type” required, Smuts argued, “institutional segregation.” Natives' institutions were segregated from civilized institutions of colonizers. Why did Smuts do this? Allowing natives so munificently to live the life like they know or used to live before the colonial encounter, while letting the colonizers to take care of civilized part of ruling the colonies as a whole or colonial relation between colonies and colonizers.<sup>24</sup>

As long as the natives live in their customary law, they would never be a ruler; they need a civilized ruler, who is the colonial ruler. Smuts contrasted “institutional segregation” with “territorial segregation” then in practice in South Africa. The problem with “territorial segregation” in a nutshell, was that it was based on a policy of institutional homogenization. Natives may be territorially separated from whites, but native institutions were slowly but surely giving way to an alien institutional mold. As the economy became industrialized, it gave rise to “the color problem,” at the root of which were “urbanized or detribalized natives,” Smuts' point was not that racial segregation (territorial segregation) should be done away with. Rather it was that it should be made part of a broader “institutional segregation” and thereby set on a secure

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<sup>23</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.5.

<sup>24</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.17.

footing: “Institutional segregation” carries with it territorial “segregation.” The way to preserve native institutions while meeting the labor demands of a growing economy was through the institution of migrant labor, for “so long as the native family home is not with the white man but in his own area, so long the native organization will not be materially affected.” Put simply, the problem with territorial segregation was that it rendered racial domination unstable: the more the economy developed, the more it came to depend on the “urbanized or detribalized natives.” As that happened, the beneficiaries of rule appeared an alien minority and its victims evidently an indigenous majority. The way to stabilize racial domination (territorial segregation) was to ground it in a politically enforced system of “ethnic pluralism”<sup>25</sup> (institutional segregation), so that in this language everyone, victims no less than beneficiaries, may appear as *minorities*. However, with migrant labor providing the day-to-day institutional link between native and white society, native institutions fashioned as “so many rural tribal composites-may be conserved as separate but would function as subordinate.”<sup>26</sup> The system of racial rule via institutional segregation, thus appearing as if natives' institutions were being respected and well-looked-after –that is why Mamdani calls it “ethnic pluralism,” which sounds generous of colonizers to do this- when the purposefulness of this preservation was to recognize such native institutions like tribal traditions and customary law as uncivilized.

Additionally, Mamdani explains that “the emphasis on differentiation meant the forging of specifically ‘native’ institutions through which to rule subjects, but the institutions so defined and enforced were not as racial as much ethnic, not ‘native’ as much as ‘tribal.’ Racial dualism was

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<sup>25</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.7.

<sup>26</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.6.

thereby anchored in a politically enforced ethnic pluralism.”<sup>27</sup> It is certainly Mamdani’s analysis of institutional segregation in which the subordination that the Jones Act creates can be explained: although this act grants all people born in Puerto Rico the American citizenship, only the Puerto Ricans that live in the mainland can exercise all of their rights as American citizens. For example, Puerto Ricans in the island cannot vote in the American elections. Additionally, Puerto Rico has a non-voting representative in Congress. This non-voting position in the American government also shows Puerto Rico’s colonial subordinate position. This dualism enforces that Puerto Ricans on the island are *subjects*, while the ones on the mainland are *citizens*.

Similarly, how is such a colonial relation maintained? This thesis is going to explicate that they are maintained through laws that legitimize this colonial form of imperialism. Understanding the institutional history of maintaining colonial relations will illuminate how and why the Jones Act of Puerto Rico has been in place for more than a century. Before Puerto Rico was an American colony, it was a Spanish colony and although most institutions changed names, their purposes remained the same. The executive, legislative and judicial functions were carried out by a Spanish captain general who operated as the Crown’s representative.<sup>28</sup> It is through the law that the ideology of ‘barbaric vs. civilized’ becomes legitimized and therefore, imposed ‘for the better of these subordinate cultures,’ as this ideology tries to prove. Since the law is the system responsible for granting Puerto Ricans the American citizenship, it is imperative to ask, what events and actions (and by whom) led to the Jones Act of 1917? What were legal precedents of the Jones Act? These answers are going to justify that although all Puerto Ricans are legally recognized as

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<sup>27</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.7.

<sup>28</sup> Ramos, E. R. (2001). *The Legal Construction of Identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.48.

American citizens, they are not full citizens but subjects, as long as they lived in the island. Puerto Ricans do have a second-class American citizenship.

After reviewing the theory and historical practices of colonialism, the main part (Part III) of this thesis will illustrate the application of the theories of colonialism to the analysis of the conditions and processes of establishing the Jones Act. The section that will illustrate the application of the theories of colonialism to the analysis of the establishment of the Jones Act will answer the question of why the Jones Act of Puerto Rico of 1917 was imposed in the first place. Here the thesis is going to explore the doings of President Woodrow Wilson, Congress and certain Senators and their respective purposes with passing the bill that later transformed into the Jones Act. In the structural conditions that led the creation of the Jones Act, the conditions of possibility of this Act are going to be explained: Amin observed that the analysis of exchanges between developed countries and underdeveloped ones are unequal as soon as labor of the same productivity is rewarded at a lower rate in the periphery<sup>29</sup>, as the comparison between Puerto Rico's and the United States' labor power will show.

After Part III, I will explain how the institutionalization of the colonial relations via the Jones Act happened, as well as what kinds of institutions the Jones Act formalized. The process of institutionalization of colonial relations via the Jones Act was in other words the legalization of colonial domination. What establishes a colonial relation between the mainland and its colony? Military power. This thesis is going to show that empirically, the imposition of the conqueror's law and by the conqueror through the militia it is what has allowed a colonial relation to happen in the first place. The militia holds the power for weapon destruction and this institution is led by

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<sup>29</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.86.

the government, which shows the great power it has. Before the Foraker Act established a civilian government in Puerto Rico, it was a military government. The governor and the other members of the government were literally coronels and captains with high rankings in the American militia with no background or experience in how to handle a country's government. With this fact is easy to comprehend that the military institution is essential in perpetuating colonial relations.

The Jones Act was legally approved, which means that Puerto Rico is a possession of the colonist. Therefore, internationally, other countries cannot recognize Puerto Rico as an independent country that is a member of the society of states. Consequently, Puerto Rico has no place in formal international relations where the United States represents Puerto Rico. In other words, I argue that the Jones Act' clause of citizenship transformed and gave birth to the Commonwealth as they both resolve the political issue with Puerto Rico's inhabitants but not the one regarding the island's political recognition in the international spectrum as more than an American territory.

After explaining the legality of colonization through the Jones Act in Puerto Rico, I explain the military subjugation and legal foundation of political domination led to this institutionalization of colonial relations via the Jones Act, which is in part III. Then, I state the theories and history of maintaining colonial relations. The dominant countries of the world have always had a law similar to the Jones Act. The Navigations Act of 1651 was a similar cabotage law that the English Parliament imposed to its colonies.<sup>30</sup> With this type of trade, the upsurge of the primitive accumulation took place, which later then allowed the rise of monopolies. After the World War II, America gained manufacturing power because it was one of the few colonizer countries of the

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<sup>30</sup> Britannica, T. E. (2015, April 23). Navigation Acts. Retrieved February 15, 2019.

world that was not hurt by the economical dreadful conditions that the World War II left. They were able to amass wealth and have monopolies in their newly acquired colonies, which then prolonged centuries later, as the doings of the first American governor in Puerto Rico will demonstrate. Following the examination of structural conditions and institutional framing of colonial relation, Part III continues to examine the triggers that caused the Jones Act to be legislated. The analysis of the Congressional records of the Jones Act as a bill and law allows us to see why, despite numerous Congressmen's opposition to the Jones Act, it was legislated. All of this together will clarify how Emmanuel's unequal exchange theory clarifies the underlying logic of unequal exchange between colonizer and colony, rejecting Ricardo's justification of the specialization of producing raw materials via his comparative advantage. His analysis shows that this international unequal exchange is an evolution and not a first in world leading economic systems. Although most economical analysis want to portray colonies as backward and slow, Emmanuel's approach proves otherwise. While colonies are in an economic disadvantage because the raw materials they produce gave little or no profit to colonies through laws like the Jones Act. Colonist countries gained advantages as the direct result of unequal exchange: obtaining of colonial natural resources and workers cheaply and selling manufactured goods of colonizers in the captive market of colonies. The Jones Act conditioned this distortion between colonists and colonies.

The implications and conclusions of the Jones Act will clarify the asymmetrical relation between the colony and the mainland. This is the reason why a colony is formed in the first place and therefore, this is why laws like the Jones Act are created. The answer to all of these questions will illustrate the origins that led to the creation of the Jones Act of 1917. As well, historical

consequences and implications of the Jones Act will be briefly discussed as part of the conclusion to this thesis.

## **II- Colonialism: Its Theory and Historical Practice**

In Part II, I will review relevant theories of colonial relations and relevant historical practices of colonizers in maintaining colonies, with the perspective of different authors. To understand the theories of colonialism, it is imperative to study the theory of comparative advantage, which has been attributed to the British economist David Ricardo in 1817. The formation of a capitalism based on colonial trade is also one of the vivid forms of the Jones Act. Comparative advantage is a theory of Ricardo that refers to an economy's ability to produce goods and services at a lower opportunity cost than that of trade partners. A comparative advantage gives a country or a company the ability to sell goods and services at a lower price than its competitors and realize stronger sales margins.<sup>31</sup> Even if Country A produces products X and Y more cheaply than Country B, if Country B produce a product X that is almost as cheap to produce in Country B, then Country B should specialize in producing X, while country A should specialize product A. The result will be a higher quantity of products X and Y will be produced at relatively lower costs. Absolutely the lowest cost will be producing X and Y in Country A, but the quantity will be restricted due to the fixed amount of land and laborers. One of the most important concepts in economic theory, comparative advantage is a fundamental principle of the argument that all actors, at all times, can mutually benefit from cooperation and free trade. It is also a foundational principle in the theory of international trade. The comparative advantage theory suggests that countries will engage in trade with one another, exporting the goods that they have a relative advantage in productivity.<sup>32</sup>

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<sup>31</sup> Hayes, A. (2019, March 13). Why Comparative Advantage Matters. Retrieved March 7, 2019.

<sup>32</sup> Hayes, A. (2019, March 13). Why Comparative Advantage Matters. Retrieved March 7, 2019.

David Ricardo famously showed the macro-view of this theory explaining how England and Portugal both benefited by specializing and trading according to their comparative advantages. In this case, Portugal was able to make wine at a low cost, while England was able to cheaply manufacture cloth. Ricardo predicted that each country would eventually recognize these facts and stop attempting to make the product that was costlier to generate. Indeed, as time went on, England stopped producing wine, and Portugal stopped manufacturing cloth. Both countries saw that it was to their advantage to stop their efforts at producing these items at home and, instead, to trade with each other in order to acquire them.<sup>33</sup> In a macro-level and internationally speaking, this theory is supposed to drive countries into that production they are comparatively best at. If a country removes itself from an international trade agreement, or if a government imposes tariffs, it may produce a local benefit in the form of new jobs and industry. However, this is not a long-term solution to a trade problem and this is where the downfall of this macro-view of the comparative advantage theory lies. Eventually, that country will be at a disadvantage relative to its neighbors: countries that were already better able to produce these items at a lower opportunity cost.<sup>34</sup>

This theory also has a micro-view: diversity of skills. Countries learn their comparative advantages through wages. In this micro-level, people specifically learn their comparative advantages through wages. This drives people into those jobs they are comparatively best at. Wider gaps in opportunity costs allow for higher levels of value production by organizing labor more efficiently.<sup>35</sup> The greater the diversity in people and their skills, the greater the opportunity for beneficial trade through comparative advantage. There have been numerous criticisms to the comparative advantage theory in this micro-view of the theory, being the most significant

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<sup>33</sup>Hayes, A. (2019, March 13). Why Comparative Advantage Matters. Retrieved March 7, 2019.

<sup>34</sup> Hayes, A. (2019, March 13). Why Comparative Advantage Matters. Retrieved March 7, 2019.

<sup>35</sup> Hayes, A. (2019, March 13). Why Comparative Advantage Matters. Retrieved April 14, 2019.

something that economists call rent-seeking. Rent-seeking occurs when one group organizes and lobbies the government to protect its interests. For instance, this one group of laborers can lobby for special tax breaks for their products and/or extra duties (or even outright bans) on foreign products that will disadvantage them.<sup>36</sup> It is important to emphasize that the comparative advantage theory is a key insight that trade will still occur even if one country has an absolute advantage in all products.<sup>37</sup> On one hand, there is accelerated monetarization of a sector that it was not yet commercialized and on the other, destruction of the crafts by local imports and the penetration of foreign capital. The political forms that made possible that economic integration is what allowed them to happen in the first place: the authorities acted so as to shape the local structure in the way they considered appropriate to their political views.

Historically, Ricardo's theory has been used to justify the colonial division of labor during the colonial era. Ricardo's argument is that the aggregate production of goods (consequently, the aggregate benefit) will be higher when each party takes comparative advantage seriously and specializes in the product in which they have comparative advantage. This macro-view (referring not micro-view of party A or party B but to the higher aggregate production and consumption) leads to the higher economic growth in the world as a whole. Free trade with comparative advantage is better for the world as a whole. Criticizing Ricardo was important theoretically and practically: theoretically because it showed the lack of understanding Ricardo had with colonial and post-colonial economies and therefore, that not all countries can specialize in what they are best at producing and practically because the critics to his theory of comparative advantage inclined decolonized newly independent states and their policies of import substitution-based

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<sup>36</sup> Hayes, A. (2019, March 13). Why Comparative Advantage Matters. Retrieved March 7, 2019.

<sup>37</sup> Hayes, A. (2019, March 13). Why Comparative Advantage Matters. Retrieved April 14, 2019.

industrialization advocated by the postcolonial leaders in the 1930s in Latin America, 1940s in Asia, 1950s and 1960s in Africa and therefore, globally. Because of these reasons understanding Ricardo's comparative advantage theory and its critics (specifically Amin's and Emmanuel's) will clarify how the international economic system works and how it heavily influences the creation of cabotage laws, like the Jones Act of Puerto Rico.

Amin explains that comparative advantage is an economic term that refers to an economy's ability to produce goods and services at a lower opportunity cost than that of trade partners. In Amin words, capitalism has an inherent tendency of expanding markets and the colonized countries in the capitalist system, exports are mainly raw materials and agricultural products. Ricardo's macro view of his theory confirms Amin's point: Ricardo explained how England and Portugal both benefited by specializing and trading according to their comparative advantages. In the colonized countries, raw materials and the agricultural products that are their main source of exports are sold at a low cost because that is the market value of these products. As Ricardo's comparative theory states, trade will still occur between two countries even if one country has an absolute advantage in all products.<sup>38</sup> Here we can see how the comparative theory can disadvantage a country through trade and therefore, why the comparative advantage theory is not accurate.

Amin furthermore dismantles the theory of comparative advantage because according to it, the terms of trade therefore should have improved for the exports of the colonies, allowing them to have the faster growth, but with history as our witness, this has not happened. While some industries have made technical progress in the colonies, like the mining industry, this progress has been slower in general in colonies than for industry in the colonist countries. This idea of the

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<sup>38</sup> Hayes, A. (2019, March 13). Why Comparative Advantage Matters. Retrieved April 14, 2019.

theory of comparative advantages is part of the reasoning of the Jones Act, as it influenced the international economic trade with colonized countries.

## **II-A: Theories of Colonial Relations**

In this section, I review both the economic criticisms of Ricardo's comparative advantage theory and the critical legal theories that together allow you to see the reality of how colonial relations were conceived. The significance of criticizing Ricardo's theory of comparative advantage is that when one group organizes and lobbies the government to protect its interests (rent-seeking), this desire leads the lobbyists to ask for the guarding of their benefits, which for example it could be special tax breaks. American laborers would be made relatively less productive and American consumers relatively poorer by such protectionist tactics.<sup>39</sup>

Emmanuel's criticism to Ricardo establishes the colonial division of labor in which colonists export manufactured goods and colonies export raw materials fit the mutual benefits of Ricardo's comparative advantage model, but when Emmanuel examines historical advantage of colonists exporting manufactured goods, what appeared as mutual benefits was not mutual but for the colonists' benefit. Emmanuel analyzes the historical advances of the colonists and states that

They [colonialists] defend imperialism or reject it in terms of raw materials for industry, customers for British products, and the balance of trade. Everything suggests that the state which, by virtue of its geographical position and its sea power, held the initiative for action, had recourse to colonialism for the first time when its economic power was not yet strong enough to ensure the same advantages through mere competition; had then repudiated colonialism around the 1840's, when its industrial supremacy guaranteed it an effective monopoly position in world trade; and had returned to a colonialist policy when this industrial supremacy began to be challenged.<sup>40</sup>

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<sup>39</sup> Hayes, A. (2019, March 13). Why Comparative Advantage Matters. Retrieved April 14, 2019.

<sup>40</sup> Emmanuel, A., & Pearce, B. (1972). *Unequal exchange: A study of the imperialism of trade*. London: NLB. p. 186.

In Emmanuel's words, his criticism points out that "the capitalist world market is dominated by a definite law of price formation, which has the effect that unequal 'rewarding of the factors' (and, in particular, unequal rewarding of the 'labor factor,' i.e., unequal prices for labor power) necessarily causes 'inequality in exchange.' This same inequality in reward dictates an international division of labor that is inevitably unfavorable to the poor countries."<sup>41</sup> Emmanuel analyzes this labor inequality between colonist and colonized countries and explains that

If the working of the law of 'prices of production' gives rise to the economic inequalities between nations, this happens because one of the constituent elements of the price of production is wages, and wages are much lower in the poor countries than in the rich ones. It is thus, according to Emmanuel that as a result of this inequality in wage levels that a product supplied thanks to a certain number of hours of labor on the part of the poor countries can be bought by the rich countries by giving in exchange a product that has cost them a smaller number of hours of labor. What in fact counts, on the capitalist world market, that around which the price level of the various commodities oscillates, it is not their cost in labor but their cost in money, and this is made up of a cost in wages that corresponds to rates of payment that differ widely from country to country. In their turn these inequalities of payment are due to the fact that the 'labor factor' does not, as a rule, move from country to country, and so does not move from low-wage countries to high-ones. Under these conditions an international division of labor develops that is 'automatically' advantageous to the rich countries (the high-wage countries) and disadvantageous to the poor ones. This sort of international division of labor contributes not only to maintaining but also to increasing the economic inequalities between nations. This line of argument leads then, to a refutation both of Ricardo's theory of 'comparative costs' and of the claims regarding the advantages of the international division of labor that is alleged to follow from it. This reasoning implies that there exists 'independently of and prior to' imperialist exploitation (in the sense of exploitation through capital investment) a 'commercial exploitation' of the colonial or semi-colonial countries. This, it is implied, is much more deep-seated than imperialist exploitation, since it is based on the immanent laws of the capitalist world market. It must be noted here that the idea of an 'exploitation' based on simple exchange relations merely indicates the existence of a problem, namely, that of the reproduction of these exchanges – this reproduction necessarily refers back to specific product relations, the nature of which must be defined. The reality described by the term 'commercial exploitation' seems indeed to be one of the effects of what Marx called the 'international relations of production', but which he did not have the time to conceptualize. If so, imperialist exploitation, along with what has here been called

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<sup>41</sup> Emmanuel, A., & Pearce, B. (1972). *Unequal exchange: A study of the imperialism of trade*. London: NLB. p. 274.

‘commercial exploitation’, must be among the effects of these ‘international capitalist relations of production.’<sup>42</sup>

Emmanuel’s critique compounds a cyclic antagonism: whether wages be high or low, whether the social product be large or small, the two shares, that of the working class and that of the receivers of the surplus value, continue to be magnitudes that are inversely proportional to each other. Thereafter, a de facto united front of the workers and the capitalists of the well-to-do countries, directed against the poor nations, coexist with an internal-trade union struggle over sharing the loot. Emmanuel states that under these conditions, the trade-union struggle necessarily becomes more and more of a settlement of accounts between partners, and it is no accident that in the richest countries, such as the United States, militant trade-union struggle is degenerating first into trade unionism of the classic British type, then into corporatism and finally into racketeering.<sup>43</sup>

Raúl Prebisch was an Argentinian economist who also critiqued Ricardo’s comparative advantage theory. Prebisch makes clear his belief that the center(s) exploit the periphery, and he now speaks of an economic surplus which the periphery in part exports to the center. He places more emphasis on inherent monopolistic relationships than he formerly did, arguing that some price relationships have always been unfavorable, ever since the periphery was incorporated into the international economy. This judgment clearly demotes the trade cycle as a mechanism for withdrawing income from the periphery.<sup>44</sup> Prebisch now rejects the consumption-oriented society of the "center type" in favor of "democratization" of peripheral colonized areas, a process which depends on a sharp increase in capital accumulation and a "modification" of the distribution of

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<sup>42</sup> Emmanuel, A., & Pearce, B. (1972). *Unequal exchange: A study of the imperialism of trade*. London: NLB. pp.275-276.

<sup>43</sup> Emmanuel, A., & Pearce, B. (1972). *Unequal exchange: A study of the imperialism of trade*. London: NLB. p.163.

<sup>44</sup> Love, J. (1980). Raul Prebisch and the Origins of the Doctrine of Unequal Exchange. *Latin American Research Review*, 15(3), 45-72.

income. Prebisch, on the other hand, does not talk about the political means whereby the world economic system might be restructured.<sup>45</sup> Here, Prebisch's argument connects with what the Jones Act caused in Puerto Rico: no matter how hard the *jibaros* worked, they all starved and had to move to the mainland to have a decent life. The Jones Act plays a dual role in this migration, since it is the Jones Act that allows Puerto Ricans to move to the mainland to better their life opportunities as they are American citizens in the mainland (but not in Puerto Rico). But it is this law that forces them to move out of the island in the first place since they could not afford the unequal exchange that the Jones Act caused and causes in Puerto Rico. The unequal exchange that the Jones Act first caused in Puerto Rico is still visible, although it started centuries ago: By 1930, almost all of Puerto Rico's farms belong to 41 sugar syndicates. 80% of these are U.S. owned, and the largest four syndicates – Central Guánica, South Puerto Rico, Fajardo Sugar and East Puerto Rico Sugar – are entirely U.S. owned and cover over half the island's arable land.<sup>46</sup> Prebisch's criticism to Ricardo's theory states, in his words, that

It is true that the reasoning on the economic advantages of the international division of labor is theoretically sound, but it is usually forgotten that it is based upon an assumption which has been conclusively proved false by facts. According to this assumption, the benefits of technical progress tend to be distributed alike over the whole community, either by the lowering of prices or the corresponding raising of incomes. The countries producing raw materials obtain their share of these benefits through international exchange, and therefore have no need to industrialize. If they were to do so, their lesser efficiency would result in their losing the conventional advantages of such exchange. The flaw in this assumption is that of generalizing from the particular. If by 'the community' only the great industrial countries are meant, it is indeed true that the benefits of technical progress are gradually distributed among all social groups and classes. If, however, the concept of the community is extended to include the periphery of the world economy, a serious error is implicit in the generalization. The enormous benefits that derive from increased productivity have not reached the periphery in a measure comparable to that obtained by the peoples of the great industrial countries. Hence, the outstanding differences between

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<sup>45</sup> Love, J. (1980). Raul Prebisch and the Origins of the Doctrine of Unequal Exchange. *Latin American Research Review*, 15(3), 45-72.

<sup>46</sup> Denis, N. A. (2016). *War against all Puerto Ricans: Revolution and Terror in America's colony*. New York: Nation Books. p.49.

the standards of living of the masses of the former and the latter and the manifest discrepancies between their respective abilities to accumulate capital, since the margin of saving depends primarily on increased productivity. Thus, there exists an obvious disequilibrium, a fact which, whatever its explanation or justification, destroys the basic premise underlying the schema of the international division of labor.<sup>47</sup>

In other words, he introduced the idea of an industrial, hegemonic center and an agrarian, dependent periphery as a framework for understanding the emerging international division of labor between the North hemisphere and the South. Prebisch claimed that the wealth of poor nations tended to decrease when that of rich nations increased due to an unequal exchange of industrial versus agricultural goods in the North-South trading relationship. For the early structuralists, industrialization was considered a necessary step toward rectifying this pattern of unequal exchange and thus the most important objective in a development program.<sup>48</sup> The commodities that colonized countries produce have a low value and it is due to the lack of industrialization that these countries had when today's dominant countries (as Emmanuel explained) had the advantage of developing. The colonizer countries have an industrial-producing advantage, and this is the difference between Prebisch's unequal exchange theory from Emmanuel's and Amin's: Amin often refers to the socioeconomic system of capitalism and precapitalistic societies to articulate his unequal exchange theory while Prebisch denotes his unequal exchange theory with the concepts of an industrial center and an agrarian periphery.

Likewise, Prebisch specified that

The prices of primary products rise more rapidly than industrial prices in the upswing, but also, they fall more in the downswing, so that in the course of the cycles the gap between prices of the two is progressively widened. Let us now look at the explanations of this inequality in the cyclical movement of prices. It was seen that profits rise in the upswing and decrease in the downswing, thus tending to offset the disparity between demand and

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<sup>47</sup> Prebisch, R. (1950). *The economic development of Latin America and its principal problems*. Lake Success: United Nations Dept. of Economic Affairs. p.2.

<sup>48</sup> Munro, A. (2018, October 15). Dependency theory. Retrieved May 2, 2019.

supply. If profits could fall in the same way in which they rose, there would be no reason whatsoever for this unequal movement. It occurs precisely because they cannot fall in that way. The reason is very simple. During the upswing, part of the profits is absorbed by an increase in wages, occasioned by competition between entrepreneurs and by the pressure of trade unions. When profits have to be reduced during the downswing, the part that had been absorbed by wage increases loses its fluidity, at the center, by reason of the well-known resistance to a lowering of wages. The pressure then moves toward the periphery, with greater force than would be the case if, by reason of the limitations of competition, wages and profits in the center were not rigid. The less that income can contract at the center, the more it must do so at the periphery. The characteristic lack of organization among the workers employed in primary production prevents them from obtaining wage increases comparable to those of the industrial countries and from maintaining the increases to the same extent. The reduction of income—whether profits or wages—is therefore less difficult at the periphery. Even if there existed as great a rigidity at the periphery as at the center, it would merely increase the pressure of the latter on the former, since, when profits in the periphery did not decrease sufficiently to offset the inequality between supply and demand in the cyclical centers, stocks would accumulate in the latter, industrial production contract, and with it the demand for primary products. Demand would then fall to the extent required to achieve the necessary reduction in income in the primary producing sector. The forced readjustment of costs of primary production during the world crisis illustrates the intensity that this movement can attain. The greater ability of the masses in the cyclical centers to obtain rises in wages during the upswing and to maintain the higher level during the downswing and the ability of these centers, by virtue of the role they play in production, to divert cyclical pressure to the periphery (causing a greater reduction of income of the latter than in that of the centers) explain why income at the centers persistently tends to rise more than in the countries of the periphery, as happened in the case of Latin America.<sup>49</sup>

Here we can again see how the unequal exchange benefits colonists, as the terms of trade advantage the wages in the center and therefore distorts the wages in the colonized countries, thus also twisting the cost production, which causes prices to be higher in these areas, which altogether create an unequal exchange against the already poor countries. Puerto Rico' economy is not able to produce in the same industrial magnitude as the United States. This disadvantage creates low wages in the island while it grants high wages in the mainland. Additionally, Puerto Rico passed

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<sup>49</sup> Prebisch, R. (1950). *The economic development of Latin America and its principal problems*. Lake Success: United Nations Dept. of Economic Affairs. pp.13-14.

from being a Spanish colony to an American colony, which never allowed it to create an autonomous industrial economy, as the United States achieved.

Regarding underdevelopment under colonial relations, Amin denotes that the inherent tendency to expand the market and constitute an international market are characteristics only of the imperialist phase of capitalism. According to Amin, the formation of a world market, struggle for access to raw materials, and competition for the colonial monopoly are fundamental to the theory of imperialist capitalism can be seen at the beginning of capitalism and even before the Industrial Revolution.<sup>50</sup> Amin elucidates that “this permanent inherent tendency of capitalism to expand the market becomes transformed qualitatively in its forms of expression when concentration (another permanent, inherent tendency of capitalism) causes the system, at the center, to advance to the stage of monopoly.”<sup>51</sup> The nineteenth century, which was an epitome era for colonization, had also the tendency to expand the market was consequently manifested in either trade (export of goods) or in political intervention by the state, which is subjecting the periphery to the objective requirements of the center.<sup>52</sup> Colonialism enforced the imperialist capitalism in the colonized countries, and this narrative was analyzed internationally in another way. Amin states

After 1880 the monopolies were to act directly on their own behalf, and the tendency to expand the market was to find a new form of expression: the export of capital. ‘Central capitalism’ therefore has some objective needs, which result from (1) the inadequacy of the market, which is essentially agricultural in the first stages, restricted by the pace and scope of the progress of productivity in agriculture; and (2) the requirements of maximizing the rate of profit, which imply seeking abroad for cheaper goods for popular consumption,

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<sup>50</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.97.

<sup>51</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.97.

<sup>52</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.97.

so that the cost of labor can be reduced, as well as for raw materials, making it possible to reduce the value of the constant capital employed.<sup>53</sup>

In other words, under Amin's analysis for the underdevelopment under colonialist relations meant that in order for capitalism to happen, the export of capital from the colonist countries to the colonized allowed the latter's economical subordination in the first place.

Amin's analysis for the underdevelopment under post-colonialist relations leads to the systematic international institutionalism that we can still witness today.<sup>54</sup> According to Amin, underdevelopment under post-colonial relations also means that the colonist countries have an advantage by being partial specializers in producing while the colonized countries have a disadvantage by doing absolute specialization in the production of goods. Amin wrote:

In the central capitalist countries, capital is invested in all branches of production. Firms expand, and a progressively large share of their production is destined for export. The relative importance of foreign trade in the national product grows, and the market magnifies, from national to worldwide. In the countries of the periphery it is mainly those enterprises whose entire production is destined for exports that are established, something that is exceptional in the countries of the center. Whereas at the center there is partial specialization -in the sense that a commodity is produced partly for the local market and partly for export- in the periphery specialization is absolute. In the process of integrating the central capitalist economies into the world market there is symmetry in the relations among the partners, whose economies interpenetrate so as eventually, at the conclusion of a process not yet ended, to form a single market and one single integrated economy. In the relations between the center and the periphery, conversely, there is not such symmetry: the center plays the active role, opening up the market of the periphery in accordance with its own purposes.<sup>55</sup>

This is literally what the Jones Act does in Puerto Rico's economy: while in the United States' economy a commodity is produced partly for the local market and partly for export, in

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<sup>53</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.98.

<sup>54</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. pp.173-174.

<sup>55</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.175.

Puerto Rico specialization is absolute as it only sells what it produces to the United States. It is in this way that Puerto Rico's economy is asymmetrical, as its market is open in accordance with the United States' own purposes. How does Puerto Rico's specialization fit into Ricardo's comparative advantage theory? Since Puerto Rico does not trade its specialized products with any other country in the world, it does not benefit by specializing and trading according to the island's comparative advantage. In Ricardo's theory, comparative advantage is a key insight that trade will still occur even if one country has an absolute advantage in all products. In the micro-view of this theory regarding labor, Puerto Rico's colonial division of labor intensifies as the island specializes in raw materials and agricultural products, which have a low value in the international market. Here is how Ricardo's theory justifies Puerto Rico's economic subordination to the United States' economy: it allows the United States to have an absolute advantage in all products plus it disadvantages the island with its specialized products because they are not very valuable and therefore, it is highly difficult to make a profit. With Amin's underdevelopment analysis under post-colonial relations we can clearly understand how the Jones Act subordinates Puerto Rico's economy.

Likewise, Amin suggests that the prehistory of capitalism, the age of mercantile capital which runs from the sixteenth centuries to the Industrial Revolution (in the eighteenth and nineteenth century), assigned specific functions to the periphery, which meant mainly America and Africa, and later on, British-ruled India.<sup>56</sup> Capitalism in its finished (industrial) form flourished because of the exceptional meeting of the separate elements of the capitalist mode of production. One of these was a concentration of movable wealth, the other was proletarianization. Amin likewise explains that while the second element appeared as a result of the internal disintegration of the

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<sup>56</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.44.

feudal mode of production in Europe, it was international exchange between the capitalist center in the process of formation, on the other hand, and its periphery, with the independent social formations that were brought into contact with this center, on the other, together with the despoliation of the periphery, that played an essential part in the creating the movable wealth needed for transition to the next stage.<sup>57</sup> America provided, through brutal plunder, treasuries of gold and silver. Amin expounds that long-distance trade continued at this stage, but with a steady change of character. Primarily, it enabled the merchants of the Atlantic ports- Dutch, English, and French – to become rich. Then, for the benefit of this trade, plantations were developed in America, and these necessitated the slave trade, whose role in capitalist development was vital. These are evident methods of primitive accumulation and Amin illustrates that they were perpetually used and thus they subsequently evolved in the new forms of international specialization.

To clearly develop his argument, Amin describes how between the Industrial Revolution and the complete conquest of the world (in 1880-1900), a century elapsed that was in the nature of a pause: the old forms (slave trade, pillage of the New World) gradually faded away as the Industrial Revolution allowed the machineries to produce more in less time.<sup>58</sup> The new forms (ordinary trade with colonized backward countries and the exploitation of mineral wealth) took shape slowly. These new forms of peripheral colonized capitalism developed in Puerto Rico via the Jones Act through cheap labor and a market that supplies raw materials to the mainland's economy. In Amin's words, we all get the impression that Europe and the United States withdrew into themselves for a hundred years in order to accomplish the transition from the prehistoric forms of capitalism to its finished industrial form. The trade that continued during this period appeared

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<sup>57</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.44.

<sup>58</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.49.

to have been 'equal', products exchanged at their value (or more precisely, at their prices of production). The rewards of labor at the center were very low, tending to be kept down to 'subsistence' level; the terms of trade (of overseas productions in return for manufactures) evolved in the direction compliant to the rule of equal exchange.

Imperialism made its appearance as soon as the opportunities for capitalist development through the completion of the first Industrial Revolution in Europe and North America had been exhausted.<sup>59</sup> Amin suggests that a fresh geographical extension of capitalism's domain then became necessary. The periphery as we know it today was then established, by way of colonial conquest. This conquest brought different social formations again into mutual contact but in new forms: those of "central" capitalism and those of "peripheral" capitalism, in process of constitution. The mechanism of primitive accumulation, in contrast to normal expanded reproduction, is unequal exchange. To clearly understand this concept, primitive accumulation is the process by which pre-capitalist modes of production are transformed into the capitalist mode of production. This process of primitive accumulation occurred prior to the capitalist process of capital accumulation that began with the Industrial Revolution.<sup>60</sup> It appears as primitive, because it forms the pre-capitalist stage of capital and of the mode of production corresponding with it. A variety of non- and pre-capitalist "colonial," "slave," "second serf" but also "first" serf and feudal relations of production both inside and outside Europe, contributed to this amassing of capital.<sup>61</sup>

Primitive accumulation took place because in Puerto Rico pre-capitalist modes of production existed. How did the American traders and corporations take advantage of Puerto Rico's pre-capitalist elements to achieve primitive accumulation? First, The U.S. sets up the

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<sup>59</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.51.

<sup>60</sup> Frank, A. (1977). On So-Called Primitive Accumulation. *Dialectical Anthropology*, 2(2), 87-106.

<sup>61</sup> Frank, A. (1977). On So-Called Primitive Accumulation. *Dialectical Anthropology*, 2(2), 87-106.

American Colonial Bank in 1899, and the Spanish peso is replaced by the U.S. dollar as Puerto Rico's currency, which created a 40% currency devaluation. Though of equal international value, each *peso* is declared worth only 60 U.S. cents. This crippled the Puerto Rican economy, particularly for the small farmers.<sup>62</sup> Then, in 1900 and with crippled farms and 40% less wealth, Puerto Rican farmers have to borrow money from U.S. banks. With no usury law restrictions, the American Colonial Bank charges interest rates so high that, within a decade (by 1910), the farmers default on their loans, and the banks now own their land. The chief financiers of this massive land grab include the American Colonial Bank, the House of Morgan, and Riggs National Bank.<sup>63</sup>

“Central” capitalism and “peripheral” capitalism: that is the exchange of products of unequal value, or more precisely, whose prices of production are unequal. This means that from this moment forward the reward will become unequal, and it does indeed become unequal. This new international specialization was to provide the basis for both the exchange of commodities (“basic products against manufacturers,” in a superficial description that is only correct as a first approximation, Amin states) and the movement of capital for exhaustion of the possibilities of the First Industrial Revolution coincides with the formation of monopolies which made this export possible.<sup>64</sup> Amin gives credit to Marxist theorist, philosopher, economist, anti-war activist and revolutionary socialist Rosa Luxemburg for pointing out these contemporary mechanisms of primitive accumulation in the strict sense of plundering the colonies.

Amin concludes his analysis of the theory of primitive accumulation by describing how the unequal international specialization always expresses a mechanism of primitive accumulation to the advantage of the center, which keeps the periphery constantly in the same role, though in

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<sup>62</sup> Denis, N. A. (2017, January 9). Historical Overview. Retrieved on May 11, 2019.

<sup>63</sup> Denis, N. A. (2017, January 9). Historical Overview. Retrieved on May 11, 2019.

<sup>64</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.51.

changing forms.<sup>65</sup> It is this mechanism that, finding expression in an increasing divergence in the rewards of labor, perpetuates and accentuates the underdevelopment of the periphery, which Ricardo's comparative advantage theory of trade does not consider. At the same time, this “development of underdevelopment” finds expression in aggravation of the internal contradiction’s characteristic of colonized formations: an increasing divergence between sectoral productivities within the economies of the colonial periphery, a discrepancy that is extremely significant for an analysis of the social formations of underdevelopment.<sup>66</sup>

It is in this way that the Jones Act functions: as demonstrated, the American expansionism in Puerto Rico was always with the purpose of acquiring strategic positions in the Caribbean and of attaining of its natural resources and lands to amass wealth and take it back to the mainland. Although the narrative and justification of the American expansionism in Puerto Rico was never explicit, it was evident. Amin’s analysis of underdevelopment under post-colonial relations is the analysis that best describes the distortion that the Jones Act perpetuates, as his theory of primitive accumulation demonstrates. The theory of primitive accumulation is seen in the comparison between the growth of both economies and the unequal exchange implications that it has caused: migration from the colonized peripheral country to the colonist mainland, distortion in the wages earned in the island as these are low while in the mainland they are high, distortion in the colonized country’s internal market because it specializes in producing for exports (one of the two clauses of the Jones Act) and henceforth, distortion in the prices products. Although Prebisch’s and Emmanuel’s unequal exchanges theories also describe the distortion that the Jones Act creates in Puerto Rico, they lack the theory of primitive accumulation that Amin articulates within his

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<sup>65</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.58.

<sup>66</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.58.

unequal exchange theory. It is in this way that Amin's unequal exchange theory, alongside his theory of primitive accumulation best analyzes how the Jones Act has been working in Puerto Rico.

Regarding the monopolistic rise, Amin denotes that the imperialist phase of capitalism is not new: the formation of a world market, struggle for access to raw materials, and competition for colonial monopoly all date from the sixteen centuries onward.<sup>67</sup> The tendency to form a world market appears from the very beginning of capitalism, even before the Industrial Revolution. From the start of the mercantilist period, international trade played an essential part in the development of capitalism; how the dynamic, forward-moving representative firm has always been deeply integrated in the essential networks of world trade, how today, despite the myth of self-sufficiency, world trade is of vital importance to the biggest American firms.<sup>68</sup> In Amin's words, this permanent, inherent tendency of capitalism to expand the market becomes transformed qualitatively in its forms of expression when concentration (another permanent, inherent tendency of capitalism) causes the system at the center to advance to the stage of monopoly.<sup>69</sup> This goes back to Lenin, as he made monopoly the essential axis of his analysis of capitalism. This is the American expansionism and the Jones Act doings at its finest. The implementation of Section 936 of 1976 granted U.S. corporations a tax exemption from income originating from U.S. territories. In addition to Section 936, the Puerto Rican corporate tax code gave significant incentives for U.S. corporations to locate subsidiaries on the island.<sup>70</sup>

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<sup>67</sup>Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.58.

<sup>68</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.58.

<sup>69</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.58.

<sup>70</sup> Gonzalez Ferrer, A. (2016, October 23). The End of Section 936. Retrieved on March 28, 2019.

Amin additionally expounds that the objectives of central capitalism in the age of competition account for the economic policy followed by the states concerned in that period: colonial conquest and the opening of protected markets for the benefit of the metropolitan country; destruction of the crafts in the colonies, with an alternative to political means for this purpose; encouraging of emigration and the opening up of land for producing wheat and meat in the west of North and South America.<sup>71</sup> In this period, the export of capital continues to be unknown as a means of expanding markets. This is why the dominant form it assumes, in the exceptional cases when it appears at all, it is still the public debt, and collected at the center by the most powerful finance houses (e.g., the vulture loans made to Puerto Rico which made the public debt be at \$71 million).<sup>72</sup> Quite different are the forms in which this inherent tendency to market expansion is expressed in the age of monopoly. From this time forth, the export of commodities is accompanied by that of capital which gives the former a boost. International economic relations, both trade and the export of capital, continue to fulfill the same functions, so far as central capital is concerned, to counterbalance the tendency of the rate of profit to fall: by enlarging markets and exploiting new regions where the rate of surplus value is higher than at the center and by reducing the cost of labor power and constant capital.<sup>73</sup> With Amin's analysis is easy to understand how the American expansionism took place in Puerto Rico because the Jones Act legalized every doing in the name of this purpose. American monopolies were allowed to gain a surplus profit in the island because the Organic Laws of 1900<sup>74</sup>, and the Jones Act specifically allowed it to occur. The Organic Laws

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<sup>71</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.59.

<sup>72</sup> Kranz, M. (2017, October 09). Here's how Puerto Rico got into so much debt. Retrieved March 23, 2019.

<sup>73</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.59.

<sup>74</sup> History, Art & Archives, U.S. House of Representatives. (February 08, 2015). *Organic Act of Puerto Rico*. Retrieved on April 8, 2019.

of 1900 refer to both the Jones Act and the Foraker Act, which are the two laws that establish the political relation between the United States and Puerto Rico.<sup>75</sup> The U.S. Congress passed the Foraker Act, establishing a civilian government in Puerto Rico under U.S. control. The Act provided for an elected House of Representatives on the island, but not for a vote in Washington.<sup>76</sup>

Anghie's approach to the relationship between international law and the colonial confrontation will give us a broader view in how the Jones Act, a law that legalizes colonization, was allowed in the first place. His argument is that the colonial confrontation is central to an understanding of the character and nature of international law, but that the extent of this centrality cannot be appreciated by a framework which adopts as the commencing point of its inquiry the problem of how order is created among sovereign states. In attempting to demonstrate this centrality, Anghie focuses on how order is created among entities characterized as belonging to entirely different cultural systems.<sup>77</sup> Such an approach enables an exploration of the relationship between ideas of culture and sovereignty, and the ways in which sovereignty became identified with a specific set of cultural practices to the exclusion of others.

Likewise, he argues that "positivists were engaged in an ongoing struggle to define, subordinate and exclude the native; my argument, further is that colonial problems posed a significant and, in the end, insuperable set of challenges to positivism and its pretensions to develop a set of doctrines which could coherently account for native personality, a task which was crucial to the positivist self-image."<sup>78</sup> With this international legal approach we can better

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<sup>75</sup> History, Art & Archives, U.S. House of Representatives. (February 08, 2015). *Organic Act of Puerto Rico*. Retrieved on April 8, 2019.

<sup>76</sup>History, Art & Archives, U.S. House of Representatives. (February 08, 2015). *Organic Act of Puerto Rico*. Retrieved on April 8, 2019.

<sup>77</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. p.37.

<sup>78</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. pp.38-39.

understand how the international legal spectrum legalizes colonization and the subordination of the peoples in the colonies. The clear distinction that positivist law created with the concepts of “civilized” vs “uncivilized” were an essential part of this paradigm. Anghie explains that

The distinction between the civilized and uncivilized was a fundamental tenet of positivist epistemology and thus profoundly shaped the concepts constituting the positivist framework. The racialization of positivist law followed inevitably from these premises – as demonstrated, for example, by the argument that law was the creation of unique, civilized and social institutions and that only states possessing such institutions could be members of ‘international society.’ In distinguishing between the civilized and uncivilized at all these different levels, positivist jurisprudence created the first element of what I have termed the ‘dynamic of difference’, the postulation of a gap between the European and non-European worlds which had to be bridged by positivist international law.<sup>79</sup>

With this dilemma, Anghie stresses the importance of sovereignty in the positivist law. Sovereignty implied control over territory.<sup>80</sup> Similarly, Anghie elucidates that the legal difference between ‘civilized’ and ‘uncivilized’ found its way to be applied in the cultural realm as well.

Anghie wrote:

The creation and maintenance of the division between the civilized and uncivilized was crucial to the intellectual and political validity of positivist jurisprudence. The distinction between the civilized and uncivilized was to be made, then, not in the realm of sovereignty, but of society. Society and the constellation of ideas associated with it promised to enable the jurist to link a legal status to a cultural distinction. Thus, positivists argued that sovereignty and society posed two different tests, and the decisive issue was whether or not a particular entity – even a sovereign -was a full member of international society. The tribes remain outside the realm of international law, not so much because they lack sovereignty, but because they are wanting in the other characteristics essential to membership of international society. It follows then, despite positivist preoccupations with sovereignty doctrine, that ‘society’ and the ‘family of nations’, is the essential foundation of positivist jurisprudence and of the vision of sovereignty it supports. In the final analysis, non-European states are lacking in sovereignty because they are excluded from the family of nations.<sup>81</sup>

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<sup>79</sup>Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. p.56.

<sup>80</sup>Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. p.57.

<sup>81</sup>Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. p.59.

Regarding this civilized and uncivilized narrative, Anghie similarly analyses the doctrines of assimilation in which colonies were legally subordinated.<sup>82</sup> Anghie also analyzes the shift in the international legal purview in the nineteenth century. The Berlin Conference of 1884-85 is a pivotal summit that describes that era's positivist legal purview.<sup>83</sup> The Berlin conference was a summit where all the European colonist countries met to divide and rule countries of the continent of Africa to their disposition.

African peoples played no part at all in these deliberations of the Berlin Conference.<sup>84</sup> The rhetoric used in this Conference sealed the 'civilizing mission' narrative that we still hear today to be implemented in the poor countries of the world. Anghie described that trade was a crucial part of the civilizing mission itself and how positivist jurists intertwined both ideas. Anghie explained:

The humanitarian rhetoric of the conference was extremely important because it refined the justification for the colonial project. Trade was not what it had been earlier, a means of simply maximizing profit and increasing national power. Rather, trade was an indispensable part of the civilizing mission itself; the expansion of commerce was the means by which the backward natives could be civilized. 'Moral and material' well-being were the twin pillars of the program. This gave the whole rhetoric of trade a new and important impetus. Implicit within it was a new world view: it was not simply the case that independent communities would trade with each other. Now, because trade was the mechanism for advancement and progress, it was essential that trade be extended as far as possible into the interior of all these societies.<sup>85</sup>

This rhetoric then became naturalized and deemed rational. Anghie states that "the paradigm of 'order among sovereign states' excludes from critical inquiry the processes which I

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<sup>82</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. p.67.

<sup>83</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. p.69.

<sup>84</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. pp.91-92.

<sup>85</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. p.97.

have attempted to trace here; the process by which non-European states are deemed to be lacking in sovereignty and hence excluded from the family of nations and of law; and the racialization of the vocabulary of the period, in terms not only of the explicit distinctions between civilized and uncivilized, advanced and barbaric, but in terms of the integration of these distinctions into the very foundations of the discipline, the ostensibly neutral concepts of ‘law,’ ‘society’ and ‘sovereignty.’”<sup>86</sup> With this analysis we can understand that the roots of the Jones Act are part of a system that subordinates the small countries of the world. Furthermore, it is visible how the legal system legitimized the subordinations of people. Culture and international positivist law intertwined to the extent that this subordination was thought to be inherently natural.

Anghie’s analysis on the international law, the positivist law and the legalization of colonization can be connected with Mamdani’s argument on the role of customary law and tribal chiefs as colonial administrators. This legal dualism disguised the uncustomary power of Native Authorities. In Mamdani’s words,

Customary law was an administratively driven affair for those who enforced custom were in a position to define it in the first place. Custom, in other words, was state ordained and state enforced. Custom was often the outcome of a contest between various forces, not just those in power or its-on-the-scene agents. It should not be surprising that custom came to be the language of force, masking the uncustomary power of Native Authorities.”<sup>87</sup> Furthermore, he states that “legal dualism obtained relations among peasant that were regulated through customary law. The key difference with the apartheid period was in the agents who enforced it, white commissioners at the outset and native chiefs under apartheid.”<sup>88</sup>

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<sup>86</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. pp.101-102.

<sup>87</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.22.

<sup>88</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.70.

Mamdani uses colonial Africa as an example to elucidate his concept of customary law. Mamdani's theory of citizen and subject as distinct and as institutionalized as two legal entities with two distinct legal rights. In his book, he wrote:

Whereas customary law continued to be ethnically flavored in the conservative states, enforcing an ethnic identity on the subject population through ethnically organized Native Authorities, customary law in the radical states was reformed as a single law for the entire subject population, regardless of ethnic identity. The decentralized despotism characteristic of the conservative states was deracialized but ethnically organized, whereas the deracialized and detribalized power in the radical states tended toward a centralized despotism. The situation of those subjected to customary law and indirect rule through the institution of chiefship cannot be grasped through a discourse structured around the question of legal access. Unlike the urban poor who live within the confines of the modern civil power -the law- defined boundary of civil society -whose predicament may be grasped as de jure legal equality compromised by a de facto social inequality, a formal access to legal institutions rendered fictional in most cases by the absence of resources with which to reach these institutions, the situation of the rural poor is not that of lack of access or reach, but the actual law (customary law) and its implementary machinery (Native Authority) that confront them. Their problem can be grasped not through an absence or remoteness of institutions, but through institutions immediately and actually present. That ensemble of institutions, the deracialized regime of indirect rule, is best conceptualized as a subordinate but autonomous state apparatus.<sup>89</sup>

Mamdani's perspective on customary law and Anghie's analysis on positivist international law connects firmly to what the colonial Spanish administrators tried in 1897 to gain Puerto Rico's inhabitants sympathy: on November 25, 1897, Spain approved the *Carta Autonomic*, also known as *Constitución Autonomic*, which gave Puerto Rico the right of self-government. Following elections, the insular Parliament was inaugurated on July 17, 1898. Two days later, it held its first ordinary session, nevertheless, tensions were already building between Spain and the United States. On July 25, 1898, U.S troops invaded Puerto Rico and the island shifted from being a Spanish colony to an American one, which has endured until today. What did the American

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<sup>89</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. pp.136-137.

colonists do to legally rule Puerto Rico and subjugate its population? Impose the Jones Act that later gave Puerto Ricans the American citizenship and self-government in the island but whose colonial condition does not allow it to participate in the mainland's political affairs. At the same time, although the island has its own self-government, the Federal government rulings supersede it. As the U.S Citizenship and Immigration Services (USCIS) stipulates, "A U.S. territory is a partially self-governing piece of land under the authority of the U.S. government. U.S. territories are not states, but they do have representation in Congress. Each territory is allowed to send a delegate to the House of Representatives."<sup>90</sup> What they do not state is that these U.S territory delegates cannot vote in Congress. With Anghie's and Mamdani's analysis we can connect today's political affairs between Puerto Rico and the United States and understand that the origins of the Jones Act are part of positivist law ideologies that transformed into material benefits for the colonizers and that at the same time victimized the subjects of these colonized territories and ultimately, created an unequal exchange.

The unequal profits that the American expansion was causing in Puerto Rico was a clear sign of the former's imperial purposes in the island. The legitimization of these imperial determinations created a colonial association between the two countries but, what specifically constitutes a colonial relation? Empirically, in each major colonial conquest, military power allowed the imposition of the law of the conqueror. Each major colonial nation developed a legal rationalization for the replacement of indigenous law with the conqueror's law and each embraced another rationalization for the imposition of the law: the conqueror's superiority and the assumed inferiority of the conquered.<sup>91</sup> During the Spanish colonial period in Puerto Rico, its judicial

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<sup>90</sup> U.S. Territories. (2015, January 05). Retrieved May 6, 2019.

<sup>91</sup> Schmidhauser, J. (1992). Legal Imperialism: Its Enduring Impact on Colonial and Post-Colonial Judicial Systems. *International Political Science Review / Revue Internationale De Science Politique*, 13(3), 321-334.

system was called *Derecho Indiano*, which was enacted for Spain's overseas possessions. By the early 1890s Puerto Rico had in place a relatively modern legal system based on continental European civil law tradition.<sup>92</sup> Although this can be seen as an advance in the dispensation of the judicial system in Puerto Rico, others argue that it allowed authoritarianism and even violent repression of dissidents. José Trías Monje, a leading Puerto Rican constitutional historian, states that judges, many of whom were Spanish colonial administrators, did not show much enthusiasm for righting the wrongs of the authorities and protecting the basic rights of the population.<sup>93</sup> Judicial fairness was more an ideal than a consummate fact during this time. Furthermore, Trías Monge quoted one of the leading representatives of the Creole elite (someone of Spanish descent who was born in the colonies and not in Spain) who complained that Puerto Rican peasants thought that 'laws are something mysterious elaborated not with the purpose of protecting [them], but with the aim of oppressing [them]. Trías Monge states that the result of this was a state of alienation and indifference to the law and its representatives. Trías Monge analysis is predicated on that this distrust of the imposed law system was based on the despotic nature of colonial authorities and on the gap between what the law dictated and what was implemented.<sup>94</sup>

In 1897, Spain conceded Cuba and Puerto Rico an Autonomous Charter. The charter is regarded by many as a significant step in the obtaining of self-government for Puerto Rico. It provided for the continued representation of Puerto Ricans and Cubans in the Spanish Cortes, the equality of rights between Spaniards and Antilleans, universal suffrage and the establishment of an insular parliament. This insular government was delegated important powers. In a desperate

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<sup>92</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.34.

<sup>93</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.35.

<sup>94</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.35.

effort to hold on to its last two possessions in the Americas, Spain granted Cuba and Puerto Rico a broad array of rights including those under Title I of the Spanish Constitution, which bestowed all the rights of Spanish citizens and gave universal suffrage to all males more than twenty-five years old. Specifically, on November 25, 1897, Spain approved the *Carta Autonómica*, also known as *Constitución Autonómica*, which gave Puerto Rico the right of self-government. The first elections under this new political arrangement were held in March 1898. At that time the Liberal Party, then led by Luis Muñoz Rivera, received most of the votes.<sup>95</sup> Following elections, the insular Parliament was inaugurated on July 17, 1898.<sup>96</sup> Two days later, it held its first ordinary session, however, tensions were already building between Spain and the United States. On July 25, 1898, U.S troops invaded Puerto Rico.<sup>97</sup> Puerto Rico's change of colonial masters from Spain to the United States did not alter the fact that the island continued to provide raw materials to the central economy. This provision influenced in the rise of American monopolies, specifically in the sugar and pharmaceutical industry. The implementation of these monopolies was justified by the theory of colonial rule, who is articulated by Mamdani. Using an apartheid racial rule as an archetype, Mamdani describes the racial colonial relations in Africa with a situation that took place in Cape. Mamdani wrote:

The point was to be driven home seven years later, in 1871, when the Cape annexed Basutoland; official policy changed dramatically and ushered in the third phase in the evolution of native policy in the Cape. Arguing that its inhabitants were “not yet sufficiently advanced in civilization and social progress” to assume full responsibility as citizens, the Cape authorities rejected legal assimilation for the natives of Basutoland. For the first time, then, dualism in personal law and political inequality went hand in hand. But the Sotho petitioned for a parliamentary franchise in 1872. The governor's response was revealing. Rejecting the appeal, he warned them of the entire range of consequences if legal

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<sup>95</sup> History, Art & Archives, U.S. House of Representatives, Library of Congress. *Autonomy and War*. Retrieved on May 3, 2019.

<sup>96</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.36.

<sup>97</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.55.

assimilation were to hold: “Colonial law would have to supersede Sotho law, the unoccupied land would be appropriated and sold, and whites be allowed to acquire land and settle in Basutoland.”<sup>98</sup>

Similarly, Anghie’s theory of colonial law offers an insight on how conquest and colonization were done by imperialist colonist countries. Anghie stipulated how law legitimized the conquest of a territory and how the non-European states lacked this principle, and therefore, how the European states took advantage of it. Anghie wrote:

Conquest generally involved militarily defeating an opponent and thus acquiring sovereignty over the defeated party’s territory. Conquest was one of the most ancient ways of acquiring title and, within the nineteenth-century framework, it was a completely legal and valid way of expanding territory. Recognition of such a right of conquest is completely contrary to the very concept of law, as it legitimizes outcomes dictated by power rather than legal principle. Given the military weakness of the non-European states, and the absence of any legal limitations on a state’s ability to commence a war, it was inevitable that European Empires would expand by the conquest of large parts of Asia and Africa. Furthermore, European states quite openly relied on the doctrine of conquest as a basis for their title. The emphasis on the concept of property, and the positivist view that uncivilized peoples were not legal entities, also contributed towards doctrines such as ‘occupation’, erasing the existence of many non-European peoples. This meant that the territory of ‘tribal’ peoples could be appropriated simply through occupation by the European state on the basis that tribal organization did not correspond with a ‘State.’ Thus, British title to the Australian continent was based on occupation of uninhabited territory *territorium nullius*; it was irrelevant that Aboriginal peoples had occupied the continent for many thousands of years. Each of these doctrines relied upon different notions of native personality, as the particular means of asserting title depended on the positivist assessment of the degree of civilization of the peoples occupying the land. Using this scale, the positivists asserted, for example, that in the case of merely tribal people’s occupation itself would suffice. If the natives belonged to what positivists regarded as an uncivilized and yet organized polity, however, European powers would have to assert title through some other means such as conquest or cession. The issue of cession raised the problems discussed earlier as to treaty relations between European and non-European peoples. The legitimacy of conquest as a mode of acquiring control, together with the positivist argument that resort to force was a valid expression of sovereign will, meant that few restrictions were imposed on imperial expansion.<sup>99</sup>

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<sup>98</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.67.

<sup>99</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. pp.83-84.

Regarding justifying colonialism: trade, humanitarianism and the civilizing mission, Anghie expressed how ‘civilization’ became a synonym of ‘advancement’ for colonized countries through trade. He wrote:

The humanitarian rhetoric of the Berlin Conference of 1885 was extremely important because it refined the justification for the colonial project. Trade was not what it had been earlier, a means of simply maximizing profit and increasing national power. Rather, trade was an indispensable part of the civilizing mission itself; the expansion of commerce was the means by which the backward natives could be civilized. ‘Moral and material’ well-being were the twin pillars of the program. This gave the whole rhetoric of trade a new and important impetus. Implicit within it was a new world view: it was not simply the case that independent communities would trade with each other. Now, because trade was the mechanism for advancement and progress, it was essential that trade be extended as far as possible into the interior of all these societies.<sup>100</sup>

Both of these analyses allow us to understand how the rich countries of the world have had an institutional and economical advantage to colonize and exploit what today are the poor countries of the world. It is because of these advantages that the Jones Act was allowed to be imposed in Puerto Rico. It was not the first territory to be colonized and subordinated. Simply, the United States took advantage of its dominant position to legally benefit from Puerto Rico as much as they could. As seen with the example of the British occupation of Australia, colonizers justify their doings through the law and that is exactly what American colonizers did with the imposition of the Jones Act.

The Jones Act legalized the inequality between citizens and Puerto Ricans as subjects and this legalization of inequality led to the development of the kind of discourse that justifies the harsher treatment of the colonized peoples like the Malays and Indonesians according to Alatas as

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<sup>100</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. p.97.

well as Puerto Ricans. “The Myth of the Lazy Natives”<sup>101</sup> was applied in the first place to Puerto Ricans and them in general are seen to have a second-class American citizenship by the American government and nation. This myth was analyzed by Syed Hussein Alatas' book, where he stated how he used the material benefits of identifying natives as lazy to colonizers, thus creating such a myth is an ideological manipulation of all of colonizers who are all interested in cheap labor of colonized subjects.<sup>102</sup> The colonized Puerto Ricans must be lazy for the sake of the American colonizers because this myth is convenient for them: as Anghie explains with his positivist law analysis, the colonizers good image was essential to seal the civilizing mission in the colonies. If Puerto Ricans are lazy and barbaric, then the colonizer’s mission was to civilize them and convert them into hard-working people. By bringing industrial advancements to the colonies and therefore, “a good use of the land, its resources and its peoples,” the colonizers justified the exploitation of the former through total occupation and colonization. Whereas the temperate zones were thought to be more conducive to hard work, self-discipline, and therefore capacity for self-government and economic and scientific progress, the “tropics” were considered breeders of lazy, ignorant, and inferior populations incapable of self-government and condemned to be governed from outside for progress and civilization ever to flourish in their midst.<sup>103</sup> This ideology therefore justified the American expansionism: in other words, since the “tropics” were not able to have a civilian government, the American imposition of laws meant that they were upgrading their legal and social system. The correlation between this ideology and the justification of the imposition of cabotage laws as the Jones Act is clear.

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<sup>101</sup> Hussein Alatas, S. (1977). *The Myth of the Lazy Natives*. New York, NY: Routledge. p.55.

<sup>102</sup> Hussein Alatas, S. (1977). *The Myth of the Lazy Natives*. New York, NY: Routledge. p.56.

<sup>103</sup> Ramos, E. R. (2001). *The Legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.39.

## II-B. History of Maintaining Colonial Relations

In this section, I am going to explain how colonial relations have been perpetuated in different colonial empires and how this knowledge of historical practices of colonizers help me understand how the laws like Jones Act came into existence. The theories of colonialism have explained that the purpose of it is to amass wealth in the mainland. The Spanish Empire did it in Puerto Rico and its other former colonies, the United Kingdom did it with its former colonies and with the implementation of the Navigations Act, which used to function very similar to the Jones Act provisions. These colonial relations have existed for centuries and in different countries but, how are such colonial relations maintained? Through laws that legitimize this colonial form of imperialism. Understanding the history of maintaining colonial relations will clarify how and why the Jones Act of Puerto Rico has been imposed for more than a century. During the Spanish-American War, the United States invaded Puerto Rico to secure a strategic foothold in the Caribbean. When the Treaty of Paris formally ended the conflict in December 1898, Spain ceded Puerto Rico, along with Guam and the Philippines as prizes for winning the war, to the United States.<sup>104</sup>

A typical colonial pillage orchestrated by the first civilian governor of Puerto Rico shows how the Jones Act was always intended to advantage the colonizer country. One of the most profitable and prevailing colonizer business was the sugar cane industry. To explain how this transpired, the doings of Charles Herbert Allen are pivotal. He was the first civilian governor of Puerto Rico, from 1900 to 1901. The book *War Against All Puerto Ricans* elucidates how Governor Allen wasted no time in Puerto Rico. He immediately generated a budget for the entire

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<sup>104</sup> History, Art & Archives, U.S. House of Representatives. *Organic Act of Puerto Rico*. Retrieved on April 08, 2019.

island – within a matter of weeks, and with little consultation or oversight. This “dark room budget” had its uses. By raising property taxes, withholding municipal and agricultural loans, and freezing all building repair and school construction funds, Allen invaded the island treasury and re-directed its budget to subsidies for U.S.-owned farm syndicates, no-bid contracts for U.S. businessmen, and roads built by agents from his father’s Massachusetts lumber business (Otis Allen Lumber), at double the old costs. Through his dark room budget, Denis points out that Allen also created new agencies, offices and salary lines, all filled by U.S. bureaucrats. By the time Allen left in 1901, nearly all of the governor’s eleven-member Executive Council were U.S. expatriates and half the appointive offices in the government of Puerto Rico had been given to visiting Americans, 626 of them at top salaries. But Allen developed a larger plan. Throughout his “First Annual Report” to U.S. President McKinley, there are clear clues of where Allen was headed. He wanted to extract as much wealth from Puerto Rico as possible to create a monopoly.

The soil of this island is remarkably productive...as rich as the delta of the Mississippi or the valley of the Nile.” ... “With American capital and American energies, the labor of the natives can be utilized to the lasting benefit of all parties.” ... “Porto Rico is really the ‘rich gate’ to future wealth... by that indomitable thrift and industry which have always marked the pathway of the Anglo-Saxon.” ... “The yield of sugar per acre is greater than in any other country in the world.” ... “A large acreage of lands, which are now devoted to pasturage, could be devoted to the culture of sugar cane.” ... “The cost of sugar production is \$10 per ton cheaper than in Java, \$11 cheaper than in Hawaii, \$12 cheaper than in Cuba, \$17 cheaper than in Egypt, \$19 cheaper than in the British West Indies, and \$47 cheaper than in Louisiana and Texas.<sup>105</sup>

In Denis' words, this was no mere “First Annual Report” to the President. It was a business plan for a sugar empire, and Allen swiftly staked his claim. A few weeks after handing in this report, on September 15, 1901, Allen resigned as governor and headed straight to Wall Street, where he joined the House of Morgan as vice-president of both the Morgan Trust Company, and the

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<sup>105</sup> Denis, N. A. (2016). *War against all Puerto Ricans: Revolution and Terror in America's colony*. New York: Nation Books. p.48.

Guaranty Trust Company of New York. Allen constructed the largest sugar syndicate in the world, and his hundreds of political appointees in Puerto Rico provided him with land grants, tax subsidies, water rights, railroad easements, foreclosure sales and favorable tariffs.<sup>106</sup> By 1907 Allen's syndicate, the American Sugar Refining Company, owned or controlled 98% of the sugar processing capacity in the United States and was known as the Sugar Trust. By 1910, Allen was Treasurer of the American Sugar Refining Company, by 1913 he was its President, and by 1915 he sat on its Board of Directors. By 1930, 45 percent of all the arable land in Puerto Rico had been converted into sugar plantations owned by Charles Herbert Allen and US banking syndicates. These syndicates also owned the insular postal system, the entire coastal railroad, and the San Juan international seaport.<sup>107</sup> Denis stated in his book "To put it plainly: as the first civilian governor of Puerto Rico, Charles H. Allen used his governorship to acquire an international sugar empire, and a controlling interest over the entire Puerto Rican economy. You may have heard of Charles Allen's sugar empire. Today, it is known as Domino Sugar."<sup>108</sup> Charles Herbert Allen wired the Puerto Rican economy, it is because of this that Denis calls him "The sugar king."

The creation of sugar cane monopolies in Puerto Rico had one determination and Amin emphasizes the reason why foreign capital preferred industries directly producing for export rather than those entering into competition with imports. The condition of disparity between the rewards of labor at the center and in the periphery did not become adequate until a period had been reached when the concentrations of industries at the center was itself already advanced. In these circumstances it was the same monopolies that exported goods to the colonized countries which

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<sup>106</sup> Denis, N. A. (2016). *War against all Puerto Ricans: Revolution and Terror in America's colony*. New York: Nation Books. p.48.

<sup>107</sup> Denis, N. A. (2016). *War against all Puerto Ricans: Revolution and Terror in America's colony*. New York: Nation Books. p.49.

<sup>108</sup> Denis, N. A. (2016). *War against all Puerto Ricans: Revolution and Terror in America's colony*. New York: Nation Books. p.49.

also invested capital in them. They sought to maximize the profit they secured from their activities as a whole (at the center and at the periphery) and this led them to prefer the export activities of the periphery. As for the national capital that came into being in the colonial periphery, this was not big enough or not sufficiently centralized to be capable of competing with foreign monopolies. It therefore chose, as far as possible, the sectors that were not competitive with the latter but complementary to them, especially comprador activity, services or this field had been left clear for it, agricultural production for export.<sup>109</sup> The creation of sugar cane monopolies in Puerto Rico had one purpose: to guarantee the American expansionism purpose of amassing either personal or national wealth.

After governing the island under military rule for two years, the United States attempted to clarify the nature of its jurisdiction over the country in the Foraker Act.<sup>110</sup> Named for Senator Joseph Foraker, the legislation established a governor's office and an executive council, both composed of presidential appointees. It also created a local house of delegates and a Resident Commissioner in Congress, both elected via popular vote. This position exists to this day: they have a voice in Congress, but they cannot vote. Puerto Rico's self-governance was severely limited because the governor and the executive council had veto power over any legislation passed by the House of Delegates.<sup>111</sup> In addition, all federal laws of the United States were to be in effect on the island. The first civil governor of the island under the Foraker Act was Charles H. Allen, inaugurated on May 1, 1900 in San Juan, Puerto Rico.<sup>112</sup> The Foraker Act is one of the two laws that compound the Organic Laws of 1900, which are the laws that establish Puerto Rico's and the

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<sup>109</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.97.

<sup>110</sup> Foraker Act of 1900 (Puerto Rico Civil Code Apr. 12, 1900, Ch. 191, 31 Stat. 77.) Retrieved February 7, 2019.

<sup>111</sup> History, Art & Archives, U.S. House of Representatives. *Organic Act of Puerto Rico*. Retrieved April 08, 2019.

<sup>112</sup> Foraker Act (Organic Act of 1900). (2011, June 22). Retrieved March 12, 2019.

United States relationship: the other one is the Merchant Marine Act of 1917, also known as the Jones Act.<sup>113</sup>

The establishment of mass production, based on the cottage industry, meant England was well on the way to becoming a capitalist and industrially-based society. As the 18th Century progressed, this transition was completed.<sup>114</sup> The Navigation Acts of 1650 and 1651 allowed a national accumulation of wealth as it prohibited the importation into England of all goods except those carried by English ships or ships owned by the producing country, eliminating third-party carriers. Foreign ships were barred from trading in the colonies. It should be noted in all these acts that the colonies were part of the Empire, and thus colonial ships were British ships.<sup>115</sup> This is when the United Kingdom started to engage with capitalist mercantilism in the South.

The former imposed the Navigation Acts on its colonies and the latter did the same with the imposition of the Jones Act in Puerto Rico. The acquisition of land also brings a challenge to the colonizers: how to deal with the *natives* that are inhabitants of that territory. The Jones Act did grant the American citizenship to Puerto Ricans but are they all (the ones that live in the island and the ones that live on the mainland) treated with the same recognition and do they all have the same rights? The difference between the concepts of citizen vs. subject will illustrate that there can be two or more levels of hierarchy within the concept of legal recognition and nationality through citizenship. Mamdani's analysis of the colonial relations in Africa distinguishes what citizens and subjects are. He explained that the point of direct administration was to "suppress the great native polities which are nearly always a barrier between us and our subject", quoting French

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<sup>113</sup> Jones Act of 1917 [(H.R. 9533), Pub. L. No. 64-368],” *PRCAP (PR Citizenship Archives Project)*. Retrieved April 3, 2019.

<sup>114</sup> Williams, E. (2005, September 7). Unit 1: The Origins of Capitalism. Retrieved March 18, 2019.

<sup>115</sup> Teschke, B. (2011). *The Myth of 1648: Class, Geopolitics, and the Making of Modern International Relations*. London: Verso.

governor-general W. Ponty in 1910.<sup>116</sup> Mamdani describes the importance of the chiefs of the village for assimilation regarding this matter:

To flatten all mediation between the village and themselves to one, the village chief, came to be the key object of French policy. But in reality, this objective came elusive. Caught between an acute shortage of European administrators who were concentrated in the main towns and a turn of policy from the previous assimilationist bent, a de facto recognition of a chieftainship beyond the village level became inevitable.<sup>117</sup>

For this, theorist Jules Harmand proposed the concept of *association*, which he defined as “indirect administration, with the preservation but improved governance of the institutions of the conquered peoples, and with respect for their past”<sup>118</sup> To describe how these ideas executed in colonial Africa, Mamdani stated:

Even in the coastal enclaves of Gorée, St. Louis, Rufisque and Dakar, which had received a ‘full mandate’ as communes between 1872 and 1889. Thereby granting its ‘originators’ the right to elect a general council and to send a deputy to the French parliament, the policy of assimilation was stiffened as black Senegalese organized to wrest the seat of the deputy from the coalition of whites and mulattos who had held it until the election of 1913. Out of a total population estimated at around one million and three quarters, only 78,373 Africans were considered citizens. The rest were classified as subjects. But even the members of the Four Communes straddled assimilation and association, direct and indirect rule: although they had the right to vote, their personal relations were regulated from 1936 on under customary law, Islamic or otherwise. They were beyond the pale of the French civil code.<sup>119</sup>

It is with this example that we can understand that the subjects were the Africans who lived in tribalism while the Africans who lived urbanized were considered citizens. Under this analysis we can understand who is a subject and a citizen within Puerto Ricans: politically, the ones that live

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<sup>116</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.83.

<sup>117</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.83.

<sup>118</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.83.

<sup>119</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.84.

on the island are the subjects and the ones that live on the mainland are citizens as the latter can exercise their rights in all aspects, while the former cannot.

What are Puerto Ricans? They were and are colonized people, not citizens but subjects with some rights. So, what makes someone a citizen? Since the Jones Act grants American citizenship to anyone born in Puerto Rico, it is necessary to investigate Shklar's analysis on the American citizenship. Judith Shklar explains in her book *American Citizenship* that the two essential compounds for the concept of American citizenship are voting and earning. Regarding citizenship, Shklar illustrates that

Ruling, military valor, subjection by birth or consent, legislating directly or through representatives, property-owning: these are merely the most celebrated qualifications for citizenship in various regimes. I have mentioned them partly as a background to American thinking about citizenship, but specially to bring out how distinctive it has been. No historically significant form of government or of citizenship is in principle incompatible with the exclusion of large groups of people, but natural rights theory makes it very difficult to find good reasons for excluding anyone from full political membership in a modern republic. To be sure, Americans have always found plenty ideological reasons, from racism to social Darwinism, from religious bigotry to nativism, to justify exclusionary and discriminatory policies. When eventually they did give way to political reality, the barriers to citizenship, piece by piece, had to come down.<sup>120</sup>

Regarding earning, she explains that it became the ethical basis of citizenship. This vision of economic independence and self-directed earning created a standard in American citizens. In Shklar words, "We are citizens only if we 'earn.'"<sup>121</sup> She additionally states that America sees its unemployed citizens to hold a "second class citizenship", since not making a living in industrial America is close to "being nothing." According to her, this creates the presumption that the right to work is a vital element of the American citizenship.<sup>122</sup> Perhaps Shklar's analysis can illustrate

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<sup>120</sup> Shklar, J. N. (2001). *American citizenship: The Quest for Inclusion*. Cambridge: Harvard University Press. p.42.

<sup>121</sup> Shklar, J. N. (2001). *American citizenship: The Quest for Inclusion*. Cambridge: Harvard University Press. p.66.

<sup>122</sup> Shklar, J. N. (2001). *American citizenship: The Quest for Inclusion*. Cambridge: Harvard University Press. p.67.

better why Puerto Ricans in the island cannot vote in American elections. Although all Puerto Ricans born in the island are legally viewed as American citizens, as the Jones Act stipulates, Puerto Ricans hold a second-class American citizenship. They cannot exercise all the rights that someone born in continental North America can, like voting for the President. It is in this point that the multiple layers that compound the concept of American citizenship show how it was not granted to Puerto Ricans to exclusively benefit them.

What makes someone a subject? In his book, Mahmood Mamdani explains that direct and indirect rule were the methods of domination used by the colonizers to organize their colonial state. Direct rule was the form of urban civil power. It was about the exclusion of natives from civil freedoms guaranteed to citizens in a civil society. Indirect rule, however, signified a rural tribal authority. Direct rule, according to Mamdani is the establishment of the social prerequisite of a single legal order in a colonial settler society: appropriation of land, destruction of communal autonomy, and establishment of the “freedom” of the individual to become a wage worker. Also, the single legal order was confined to matters of personal law; in the public realm, natives were ruled by proclamation and magistrates held absolute power.<sup>123</sup> On the other hand, when Mamdani describes the indirect rule, he states that among the colonized, there was not to be even the formal pretense to a rule of law. It was created to establish a control in the face of anticolonial resistance. Indirect rule is institutional segregation. This was brought by segregation and customary law and the agents administering customary law would be the chiefs, but with newly defined powers and accountability.<sup>124</sup> Europe was the first continent to practice colonization and although his book is

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<sup>123</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.66.

<sup>124</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.63.

directed towards the European expansionism in Africa, Mamdani's analysis of citizen vs. subject is vital to understand how the Jones Act shifts these two concepts for Puerto Ricans. Mamdani stated:

Direct rule was Europe's initial response to the problem of administering colonies. There would be a single legal order, defined by the 'civilized' laws of Europe. No 'native' institutions would be recognized. Although 'natives' would have to conform to European laws, only those 'civilized' would have access to European rights. Civil society, in this sense, was presumed to be civilized society, and from whose ranks the uncivilized were excluded. *Citizenship* would be a privilege of the civilized; the uncivilized would be *subject* to an all-around tutelage. They may have a modicum of civil rights, but not political rights, for a propertied franchise separated the civilized from uncivilized.<sup>125</sup>

In the same manner, Puerto Ricans who live in the island are subjects while the ones that live on the mainland are citizens: for example, the former cannot vote for the President or in any type of American elections or have high paying salaries while the latter can. With this analysis we can see how certain rights are granted to citizens who complete certain standards. The international positivist law perspective invades sociopolitical aspects that currently affect us greatly; this is why the Jones Act continues to subordinate Puerto Ricans who live on the island and the peoples of colonized countries in general.

What did the Jones Act do to Puerto Ricans' citizenship rights? Why are they subjects in Mamdani's terms or second-class citizen in the language of American law, namely, the Jones Act of 1917? With Mamdani's analysis on colonial Africa we can better understand how all Puerto Ricans born on the island are lawfully citizens but not all of these citizens are treated as such, depending on where they want to execute their "rights." In his book, Mamdani clarifies that the

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<sup>125</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.60.

Belgians introduced indirect rule institutions in Africa and that this led to the creation of a special legal category called native, which was subject to customary law. From this moment on in 1921, all Africans were eventually required to return to the rural areas from which they were deemed to have come in the first place. In Mamdani's words, "the native must belong in his tribe."<sup>126</sup> Mamdani also states that the Portuguese have a history of colonial assimilation of the civilized natives that predates from the French Revolution. Native policy was systemized in the late 1920s and put under charge of local state. The African population was divided between the *civilizados* by 1950 and the *indigenas* (natives).<sup>127</sup> Regarding this, he additionally stated "my emphasis has been more on the mode of incorporation than that of marginalization. It is an emphasis less on the regime of rights from which the colonized were excluded on the grounds of race than on the regime of custom into which they were incorporated and through they were ruled."<sup>128</sup>

Amid the identity crisis that the Jones Act caused, Puerto Rico's fourth Resident Commissioner in Congress, Félix Córdova Dávila expressed how Puerto Rico's unclear political status influences Puerto Rico's asymmetrical relation with the United States. Córdova Dávila stated:

Are we foreigners? No; because we are American citizens, and no citizen of the United States can be a foreigner within the boundaries of the Nation. Are we a part of the Union? No; because we are an unincorporated Territory under the rulings of the Supreme Court. Can you find a proper definition for this organized and yet unincorporated Territory, for this piece of ground belonging to but not forming part of the United States? Under the rulings of the courts of justice we are neither flesh, fish, nor fowl. We are neither a part nor a whole. We are nothing; and it seems to me if we are not allowed to be part of the Union

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<sup>126</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.86.

<sup>127</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.87.

<sup>128</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.295.

we should be allowed to be a whole entity with full and complete control of our internal affairs.<sup>129</sup>

Because Puerto Ricans became colonial subjects thanks to the Jones Act, they came to be recognized openly by Americans colonial administrators as lazy. What were legal precedents of the Jones Act? With the answer to this question it is going to be visible that the Jones Act was a merge of governmental interests for the better of the American nation. Although most politicians and pivotal actors in the American expansion in Puerto Rico though little about them, the granting of the American citizenship shows that their imperial interests were greater.

The legal precedents of the Jones Act are a combination of the positivist law that Anghie articulates in his analysis of colonization through the “civilizing mission” discourse, through the concept of sovereignty that the international law legitimizes as the essential characteristic for being in the civil group of nations and through the narrative of insertion of development in the poor countries of the world. As articulated previously, positivist law legalized colonization by allowing the appropriation of land and resources to countries that did not had the industrial advantage in the first place.<sup>130</sup>

It is with Anghie’s analysis that we can understand the legal roots of the creation of the Jones Act. After Britain acquired its dominant position, it incorporated positivist ideologies to justify the appropriation of lands and subordination of its peoples through the law. After colonization was deemed detrimental, jurists and theorists created justifications that would allow colonization to still happen, through positivist law, which then converted into a cultural project

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<sup>129</sup> Wasniewski, M. A., Kowalewski, A., O’Hara, L. T., & Rucker, T. (2013). *Hispanic Americans in Congress, 1822-2012*. Washington, DC: U.S. Government Printing Office. p.157.

<sup>130</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.286.

that is perennial and internationally through the “civil vs. barbaric” narrative, a narrative and project that we still witness contemporarily. This is why the Jones Act legalized colonization and why it has been impossible to even amend it. The colonist countries had also the advantage to create institutions that protects them through law, which is the same system that they use to legally subordinate colonized people. This is the Jones Act of Puerto Rico at its finest: since the United States has been the world hegemon ever since the last half of the twentieth century, it has created institutions such as the United Nations that allow colonialism to happen. Although numerous attempts have been made to allow the independence of Puerto Rico or to even reform the Jones Act, the United Nations has done nothing to decolonize the island. Not even with the humanitarian crisis that Hurricane Maria left in 2017.<sup>131</sup> The Navigation Acts of 1651 are also legal precedents of the Jones Act, as it was basically the same legal provisions used by the British Empire in its colonies: The Navigation Acts of 1651 were acts of Parliament intended to promote the self-sufficiency of the British Empire by restricting colonial trade to England and decreasing dependence on foreign imported goods. The Navigation Act of 1651, aimed primarily at the Dutch, required all trade between England and the colonies to be carried in English or colonial vessels, resulting in the Anglo-Dutch War in 1652. The Navigation Act of 1660 continued the policies set forth in the 1651 act and enumerated certain articles-sugar, tobacco, cotton, wool, indigo, and ginger-that were to be shipped only to England or an English province.<sup>132</sup> Although the Navigation Acts were imposed under a mercantilist system, this economical system is similar to colonization as it was the economic theory and practice common in Europe from the 16th to the 18th century that promoted governmental regulation of a nation’s economy for the purpose of augmenting state

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<sup>131</sup> Anzari, L. (2018, June 18). Special Committee on Decolonization Refers to Post-Hurricane Plight of Puerto Ricans as It Approves Annual Self-Determination Text | Meetings Coverage and Press Releases. Retrieved May 6, 2019.

<sup>132</sup> Britannica, T. E. (2015, April 23). Navigation Acts. Retrieved February 15, 2019.

power at the expense of rival national powers.<sup>133</sup> In Emmanuel's words, most imperialisms are mercantile in character.<sup>134</sup>

Colonialism is based on inequality between colonizer and colonized. Racialized hierarchy between them was used to justify the colonial rule by foreign colonizers. Before Puerto Rico became an American colony, it was a Spanish colony for centuries. Inequality and a racialized hierarchy were developed during the Spanish colonization era with Christopher Columbus. When the American expansionism started in Puerto Rico, this inequality was simply shifted from one colonizer country to another one. For this argument of justifying the racially based colonial rule, Mamdani explains that the Native Authority of the time was backed up by the armed might of the modern state at the center and that civil society in the colonial context was racialized, while the Native Authority came to be tribalized.<sup>135</sup> Mamdani likewise states that since natives were seen as barbaric and backward and the colonizers civilized and advanced, this created institutional segregation. He uses Africa as an example and states that there was dual system: one for the colonizers, the other for the natives, one modern, the other customary.<sup>136</sup> One British colonial secretary in Africa said about the 'locations' where natives were going to be aggregated in separate sites that 'within the locations' customary law would hold provided it was not repugnant to the general principles of humanity, recognized throughout the whole 'civilized world.'<sup>137</sup> Because the colonial power held itself to be the representative of the "civilized world" and the custodian of

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<sup>133</sup> Teschke, B. (2011). *The Myth of 1648: Class, Geopolitics, and the Making of Modern International Relations*. London: Verso.

<sup>134</sup> Emmanuel, A., & Pearce, B. (1972). *Unequal exchange: A Study of the Imperialism of Trade*. London: NLB. p.72.

<sup>135</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.110.

<sup>136</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. pp.62-63.

<sup>137</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. pp.62-63.

“general principles of humanity,” this proclamation -reproduced in some form in every colonial context- underlined the legitimacy of its claim to modify and even remake the customary.<sup>138</sup> Also, Mamdani states that “the zeal of a ‘civilizing mission’ combined with the very real threat that tribes were seen to represent, not only to the civilizing mission, but to the civilizers themselves.”<sup>139</sup> In other words, the “civilizing mission” justified the material interests of the colonizer in the colony through this narrative.

Anghie’s legal framework on international law explain that a colony is a territory controlled politically and economically, whose purpose is to amass wealth to the mainland at all costs. Under positivist view, uncivilized peoples were not legal entities and therefore, they are not able to make a treaty or a contract with a sovereign country.<sup>140</sup> In these paragraphs I describe the legal distinction between civilized states and non-civilized states, between colonist states and colonies. Anghie clarifies that the international law system subordinated some countries while it privileged others:

Within the positivist universe, then, the non-European world is excluded from the realms of sovereignty, society, law; each of these concepts which acted as founding concepts to the framework of the positivist system was precisely defined, correspondingly, in ways which maintain and police the boundary between the civilized and the uncivilized. The whole edifice of positivist jurisprudence is based on this initial exclusion, this determination that certain societies are beyond the pale of civilization. Additionally, it is clear that, notwithstanding positivist assertions of the primacy of sovereignty, the concept of society is at least equally central to the whole system. Finally, the constitution of sovereignty doctrine itself was based on this fundamental distinction because positivist definitions of sovereignty relies on the premise that civilized states were sovereign and uncivilized states were not.<sup>141</sup>

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<sup>138</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. pp.62-63.

<sup>139</sup> Mamdani, M. (2018). *Citizen and subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press. p.66.

<sup>140</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. p.83.

<sup>141</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. p.63.

With this analysis we can see how international positivist law shaped how colonies were politically controlled by the colonizers with this rhetoric, and Puerto Rico under the Jones Act is no exception. According to the positivist lawyers who see only sovereign states as legal actors, the Jones Act is a treaty that justifies Puerto Rico's subordination as a colony because in their eyes, Puerto Ricans are not legal entities. Positivist international lawyers are not interested in the Jones Act and what it stipulates because to them, it is null: it is not a treaty between two sovereign states and to them, treaties only happen between sovereign countries and this is not a characteristic of the non-European countries under the "civil family of nations."<sup>142</sup>

### **III. The Origin of the Jones Act.**

Section III-A will investigate the structural conditions of possibility of the Jones Act, specifically how the international economic order has pushed the colonies to be a peripheral instrument for the central colonizer state and its corporations. A crisis of overproduction had hit the country since the 1890s and many government officials perceived that the only solution was the opening up of new markets for American products beyond the North American continent. The leading European countries were undergoing a new current of protectionist nationalism, which included the imposition of tariffs on foreign products, which is what the Jones Act of 1917 is about. Many countries of the world, especially Africa and the Middle East, have come under, or were targeted for European influence. Therefore, the United States came to regard the Far East, Latin America, and the Caribbean, as the "natural" outlets for the increasing stock of American commodities and as sites for further investments.<sup>143</sup> Section III-B will study the triggers that caused the Jones Act

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<sup>142</sup> Anghie, A. (2011). *Imperialism, sovereignty and the making of international law*. Cambridge: Cambridge University Press. p.64.

<sup>143</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.31.

to be legislated and it focuses on the political and Congressional actions that allowed this act to shift from a bill to a law. Why was the Jones Act of Puerto Rico of 1917 imposed in the first place? Why Senator Wesley Livsey Jones created the Jones Act in the first place? Why did Congress pass it? Why President Woodrow Wilson did sign it? What other factors led to the success of American colonialism and the imposition of the Jones Act? Section III-C will examine the institutionalizing of the colonial relations via the Jones Act, which will show how it led to the creation of the current Constitution of Puerto Rico. Lastly, Section III-D will take Emmanuel's unequal exchange theory to describe the economic distortion that the Jones Act perpetuates in Puerto Rico. These sections altogether constitute a coherent whole in understanding the roots and origins of the Jones Act of Puerto Rico.

### **III-A. Structural Conditions of Possibility of the Jones Act**

In this section, I am going to demonstrate the structural conditions that gave rise to a possibility for the implementation of the Jones Act the implementation of the Jones Act. The international economic order has pushed the colonies into an economically system in which they are only peripheral parts of central colonist countries. Although the Ricardian approach to understand and analyze the colonies' economies has been severely criticized, the theory was common knowledge, and the stagnation of these economies was regarded as natural. The narrative of advanced vs. backward has been normalized. In addition, the unequal forms of international exchange are normalized in our economic system. In other words, the general common knowledge perpetuated that the colony was a natural backward economic sector of a colonial empire.

### **III-B. Institutionalizing the colonial relations via the Jones Act**

In this section I am going to illustrate how the colonial relations between Puerto Rico and the United States were established through political institutions that deem the Jones Act purely

legal. In the same manner, it is going to be visible that the Jones Act was a consortium of the interest of different political actors, both in the mainland and in the colony.

The actual initiators or legislators of the Jones Act made it happen with the institution of the military since this was an interest that the United States had over Puerto Rico. The international context for the United States to impose the Jones Act in Puerto Rico according to Ramos was the intense competition that ensued in the international field as a “new imperialism” emerged in Europe, Japan, and Russia for generally similar reasons. Britain, France, and Germany were expanding their power and influence throughout the world through various mechanisms, including the acquisition of territories and ports in Africa, parts of China, and other regions. Policy makers and expansionists in the United States repeatedly expressed fears that the country would be left behind economic, politically, and militarily if it did not embark on a similar course.<sup>144</sup> A perceived threat was added to these fears: Americans thought that if abandoned to the Europeans, particularly to the Germans, the West Indies and Central America could be used as platforms from which to launch an eventual attack on the United States.<sup>145</sup> This perceived threat, however real or imaginary, probably served as a powerful instrument of persuasion in a country whose dominant classes had apparently undergone a crisis of self-confidence, which was transmitted to the population at large, during the economic stagnation of the early 1890s. Aside from the US’ predatory character related to the economic determinants of expansion, they had a security perspective. In other words, they responded to a perceived need to exclude other powers from the region.<sup>146</sup> What happened in the end was that the West Indies and Central America were to become new pawns in the imperialist

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<sup>144</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.34.

<sup>145</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.34.

<sup>146</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.35.

chess game of the more industrialized countries, and the United States was the principal role as a hegemony in the region.<sup>147</sup>

The emergence of a new naval ideology was created by former president of the Naval War College, Captain Alfred T. Mahan.<sup>148</sup> It is in this context of increased international competition for colonies that the emergence of a new naval ideology should be understood. In his books and numerous articles, he urged the United States to endeavor for naval supremacy in the world. Mahan's theory detailed that foreign commerce was indispensable to the welfare of any great nation, that to protect maritime routes, a world power needed to have a strong naval force; that to make viable such force it was necessary to secure overseas bases and coaling stations; and that that the possessions of colonies would ease control over such installations.<sup>149</sup> Mahan said that the Caribbean and the Pacific were the most suitable places for the establishment of naval bases and coaling stations. By the 1890s Mahan's strategies included different programs: the construction of an interoceanic canal in the Central American peninsula, the establishment of a chain of naval bases in the Caribbean and Central America, and the growth of the US Navy. He also supported the annexation of Hawaii as essential for the defense of U.S commercial and strategic interests in the Pacific.<sup>150</sup>

Senator Wesley Livsey Jones' intentions are a crucial feature in the creation and implementation of the Jones Act of 1917. Alternatively, one can blame Wesley Livsey Jones, a

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<sup>147</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.35.

<sup>148</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.36.

<sup>149</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.36.

<sup>150</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.37.

U.S. Senator from Washington State from 1909 to 1933. Jones used Mahan's writings on the national defense suggestions of the commercial shipping industry to validate creating the endowment that bears his name. To Mahan's arguments, Jones added a great dose of economic protectionism, the primary purpose of which, to Jones and his constituents, was to guarantee that citizens and businesses in Alaska would remain dependent on the shipping interests of his constituents in Seattle and the rest of Washington.<sup>151</sup> However, there was a side-effect in the case of Alaska, meaning that with few exceptions, cargo to and from the then-territory to another American port had to be passed by American ships, even if other options, (such as Canadian vessels), were economical. This meant that Alaskan shipping was significantly tied to Washington State, and shortly after the Act's implementation it was confronted by local policymakers who argued that it favored the port of Seattle at Alaska's expense.<sup>152</sup> Lanteigne, an editor, researcher and professor of politics, security and international relations also argues that the restrictions implemented by the Jones Act appeared to be at odds with President Woodrow Wilson's policies of Alaskan economic development through railway construction. In his website, he states 'As was argued in Terrence Cole's book on Alaska's pre-statehood history, *Fighting for the Forty-Ninth Star*, the Jones Act was viewed by Alaskan politicians at the time as one of many examples of the territory being placed at an economic disadvantage due to unfair federal regulation. Ernest Gruening, governor of the Alaska Territory in 1939 to 1953, referred to the Act as part of a string of policies consistent with "colonialism." Despite protests in Alaska that the law was

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<sup>151</sup> Hill, M. (2014, April 30). The Sinking Ship of Cabotage (Part 1). Retrieved March 14, 2019.

<sup>152</sup> Lanteigne, M. (2017, September 29). Puerto Rico and the Jones Act: The Alaska Connection. Retrieved March 14, 2019.

discriminatory, the provisions of the Act continued after the territory became the forty-ninth state of the US in 1959.<sup>153</sup>

Prominent expansionists such as Theodore Roosevelt and Senator Henry Cabot Lodge were very close to Mahan. Their own proposals in the US government were noticeably influenced by Mahan's principal theses. Ramos expresses that in 1895 Senator Lodge called for a much-enlarged navy, acquisition of a naval base in the West Indies, some form of U.S. dominion over Cuba, and construction of an isthmian canal under the control of the United States.<sup>154</sup> The Republican's party platform of 1896 advocated for the construction of an isthmian canal, the continued enlargement of the U.S. Navy, and a complete system of harbor and coast defenses. The newly organized National Association of Manufacturers also backed the idea of an American-controlled peninsular canal.<sup>155</sup> Mahan's ideas and then proposals put forward by business, government, and military figures and organizations evidence the inter-relationship between economic and military interests regarding the expansionist movement in the Pacific and the Caribbean. However, Ramos suggests that in the Caribbean, military objectives seemed to have had a heavier relative weight than in the Pacific, where the concern appeared to be more centrally economically. In any event, military considerations can be considered to have been the main determinant in the decision to acquire specific territories and eventually, in the establishment of direct colonial control as opposed to informal economic and political hegemony.<sup>156</sup> This is what happened in Puerto Rico: Puerto Rican historian María Eugenia Estades analyzed, attaining direct control of Puerto Rico was to deliver

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<sup>153</sup> Lanteigne, M. (2017, September 29). Puerto Rico and the Jones Act: The Alaska Connection. Retrieved March 14, 2019.

<sup>154</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.33.

<sup>155</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.33.

<sup>156</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.34.

the United States inhibited access to its territory, its resources, and even its people for military purposes.<sup>157</sup> This is explicitly shown in the Jones Act in one of the reasons of the creation of the Jones Act: exactly one month after passage of the Jones Act, President Woodrow Wilson presented his declaration of war against Germany before the U.S Congress. Then, on June 27, 1917 Wilson ordered the registration and recruitment of the male inhabitants of Puerto Rico between the ages of 21 and 31.<sup>158</sup> Close to 20,000 male Puerto Ricans served in World War I.<sup>159</sup>

This historical event clashes with Woodrow Wilson's original ideals. In his Fourteen Points, he advocated for equal trade conditions, self-determination and national sovereignty for former colonies of Europe's weakening empires.<sup>160</sup> Since the Jones Act grants citizenship to Puerto Ricans, it can be assumed that Wilson tried to maintain their self-determination as a nation while colonizing the country. Also, although Wilson did not want to enter to the World War I, he was pressured to do so as the gains were astonishing. No matter what his real intentions or ideologies were, he passed a law that changed Puerto Rico's course forever. The Jones Act of Puerto Rico provided a legal framework for the American colonization of Puerto Rico.

### **III-C: The triggers that caused the Jones Act to be legislated.**

In this section, I am going to elucidate the events and interests that generated the creation and implementation of the Jones Act. As I have demonstrated, the interests of different pivotal political actors met in the Jones Act. President Woodrow Wilson led the United States to the First World

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<sup>157</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.34.

<sup>158</sup> Denis, N. A. (2016). *War against all Puerto Ricans: Revolution and terror in America's colony*. New York: Nation Books. p.42.

<sup>159</sup> Puerto Ricans Represented Throughout U.S. Military History. (n.d.). Retrieved March 14, 2019. Four million U.S. soldiers fought on the World War I and Puerto Rican males were 2% of that infantry regiment.

<sup>160</sup> Woodrow Wilson's Fourteen Points. (2009, November 16). Retrieved March 14, 2019.

War and the pressures of winning it were greater than the belittling of Puerto Ricans being granted the American citizenship. Congress is the institution that handles the relations between the United States and its colonies, that is why is relevant to understand who created the bill. Also, it is important to understand what coalition led to be passed in Congress. With that said it is imperious to ask, what were President Woodrow Wilson's intentions or purposes when he signed the Jones Act? What were Luis Muñoz Marín intentions with the Act? What was the US Congress or the President expecting with the imposition of the Jones Act? President Wilson's intentions with the imposition of the Jones Act were to fortify the American army for the World War I. Also, since his Fourteen Points<sup>161</sup> assure self-determination for the world's colonies, it is hypothesized that he did not wanted to create a colonial relationship in the first place but as it historically turned out, he did.

### **Congressional records of the bill and the law**

Although numerous Congress members were opposed to granting Puerto Ricans the American citizenship, the national interests of winning the World War I was superior. Who drafted the bill? Democrat representative William A. Jones from Virginia and Democrat Senator John S. Shafroth from Colorado. Their coalition on the House Committee on Insular Affairs led to the drafting of the bill in 1916.<sup>162</sup> Then, in Congress, how a bill became a law? Alternatively, one can fault Wesley Livsey Jones, the U.S. Senator from Washington State. In 1919 Jones used Mahan's writings on the national defense suggestions of the commercial shipping industry to validate creating the endowment that bears his name. To Mahan's arguments, Jones added a

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<sup>161</sup> Woodrow Wilson's Fourteen Points. (2009, November 16). Retrieved March 14, 2019.

<sup>162</sup> 1917 Jones Act [(H.R. 9533), Pub. L. No. 64-368], "PRCAP (PR Citizenship Archives Project), Retrieved April 3, 2019.

great dose of economic protectionism, the primary purpose of which, to Jones and his constituents, was to guarantee that citizens and businesses in Alaska would remain dependent on the shipping interests of his constituents in Seattle and the rest of Washington.<sup>163</sup> However, there was a side-effect in the case of Alaska, meaning that with few exceptions, cargo to and from the then-territory to another American port had to be passed by American ships, even if other options, (such as Canadian vessels), were economical. This meant that Alaskan shipping was significantly tied to Washington State, and shortly after the Act's implementation it was confronted by local policymakers who argued that it favored the port of Seattle at Alaska's expense. Aside from these critics, others opposed as well: House Democrat Fernando Wood, from New York stated the he opposed annexation of Puerto Rico because it would add to the country's Negro population. Congressman John F. Farnsworth of Illinois reprimanded his colleagues by considering inviting "semi-civilized, semi-barbarous men who cannot speak our language, who are unused to our laws and institutions, to vote with us and to help legislate for us."<sup>164</sup> Senator Charles Sumner of Massachusetts one expressed that "the danger posed by taking into this country any of the Latin race with its treacherous blood and its notions of superstition and bigotry."<sup>165</sup> Although the bill had these critics and rejections from some members of Congress, the pressure of the U.S entering into the First World War and the question of how handling the newly acquired territory in the Caribbean collided to create the citizenship provision in the Jones Act. Eighteen-thousand Puerto Ricans served in the World War I and it

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<sup>163</sup> Hill, M. (2014, April 30). The Sinking Ship of Cabotage (Part 1). Retrieved March 14, 2019.

<sup>164</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.41.

<sup>165</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.41.

can be assumed that the achievement of winning this international combat was because of the U.S bigger and stronger army.

### **III-D. The unequal exchange the Jones Act perpetuates in Puerto Rico**

As I have demonstrated with Emmanuel's, Amin's and Prebisch's arguments the Jones Act creates a distortion in the Puerto Rican economy, making it stagnant while the United States' flourishes. How is this economic distortion shown in the unequal exchange theory? The Jones Act allowed the United States to manipulate Puerto Rico's economy to its advantage. Amin's primitive accumulation theory explains that this process occurred prior to the capitalist process of capital accumulation. A variety of non- and pre-capitalist "colonial," "slave," and feudal relations of production both inside and outside Europe, including Western Europe, contributed to this amassing of capital. Primitive accumulation took place because in Puerto Rico pre-capitalist modes of production existed and the American government saw this as an advantage to further their expansionism. After imposing the American dollar and removing the Puerto Rican *peso*, the U.S also imposed American banks and a new economic system: capitalism. This imposition created an unequal exchange between Puerto Rico and the United States, allowing the later to amass wealth at the cost of the former's economic stagnation. The unequal exchange also caused migration from the colonized peripheral country to the colonist mainland, distortion in the wages earned in the island as these are low while in the mainland they are high, distortion in the colonized country's internal market because it specializes in producing for exports and hereafter, distortion in the price's products. Amin's unequal exchange theory as well as his primitive accumulation theory are the very important basis of the Jones Act analysis.

This asymmetrical phenomenon created an unequal exchange, according to Arrighi Emmanuel. Part of his theory conditions that for a country in a competitive system to derive and advantage from its foreign trade, it must consume more than the others do, whether in the form of direct wages or of unproductive collective expenditure or other kinds of consumption.<sup>166</sup> Although he himself said that was aware of how outrageous this may sound, his theory showed that under capitalist production relations one earns as much as one spends, and that prices depend on wages. Likewise, his theory firmly stands on the ideology that “political parties are opportunist by nature, since their business is the conquest of the masses and the seizure of power at a given historical moment and under given historical conditions. A political party anxious to preserve its identity may consent to make temporary retreats, refusing to bow to transitory objective conditions.”<sup>167</sup> This may explain the justifications of the American expansionism to validate the imposition of the Jones Act in Puerto Rico.

Emmanuel’s theory further promotes that “When, however, the relative importance of the national exploitation from which a working class suffers through belonging to the proletariat diminishes continually as compared with that from which it benefits through belonging to a privileged nation, a moment comes when the aim of increasing the national income in absolute terms prevails over that of improving the relative share of one part of the nation over the other.”<sup>168</sup> This is the type of unequal exchange that the Jones Act brings to Puerto Rico. In other words, the United States’ economy thrives because Puerto Rico’s economy is stagnant and vice versa. Similarly, the affluence of the colonist countries was amassed on the back on the peoples of the colonized countries. One side of the world is colonized and subordinated by the other one:

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<sup>166</sup> Emmanuel, A., & Pearce, B. (1972). *Unequal exchange: A study of the imperialism of trade*. London: NLB. p.180.

<sup>167</sup> Emmanuel, A., & Pearce, B. (1972). *Unequal exchange: A study of the imperialism of trade*. London: NLB. p.180.

<sup>168</sup> Emmanuel, A., & Pearce, B. (1972). *Unequal exchange: A study of the imperialism of trade*. London: NLB. p.182.

the colonist and subordinator. Amin supports this as he explained that the mechanism of an increasing divergence in the rewards of labor perpetuates and highlights the underdevelopment of the colonies (he refers to peripheries specifically).<sup>169</sup> The mechanism of primitive accumulation to the advantage of the United States has kept Puerto Rico in a constant role of raw material producer ever since the U.S invasion in 1899. This discrepancy has been significant for Puerto Rico's social formations of underdevelopment.

The Navigation Act is very similar to the Jones Act. In October of 1651, the English Parliament passed its Navigation Act of 1651. These acts were designed to tighten the government's control over trade between England, its colonies, and the rest of the world. England's American colonies could only export their goods in English ships.<sup>170</sup> The Navigation Acts of 1651 were a series of laws designed to restrict England's carrying trade to English ships, effective chiefly in the 17th and 18th centuries. The measures, originally framed to encourage the development of English shipping so that adequate auxiliary vessels would be available in wartime, became a form of trade protectionism during an era of mercantilism.<sup>171</sup> The system came into its own at the beginning of the colonial era, in the 17th century. The great Navigation Act passed by the Commonwealth government in 1651 was aimed at the Dutch, then England's greatest commercial rivals. It distinguished between goods imported from European countries, which could be brought in either English ships or ships of the country of origin, and goods brought from Asia, Africa, or America, which could travel to England, Ireland, or any English colony only in ships from England or the particular colony.<sup>172</sup> Since mercantilism was the economic system that

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<sup>169</sup> Amin, S., & Pearce, B. (1978). *Accumulation on a world scale: A critique of the theory of underdevelopment*. Hassocks: Harvester Press. p.58.

<sup>170</sup> Britannica, T. E. (2015, April 23). Navigation Acts. Retrieved March 14, 2019.

<sup>171</sup> Britannica, T. E. (2015, April 23). Navigation Acts. Retrieved March 14, 2019.

<sup>172</sup> Britannica, T. E. (2015, April 23). Navigation Acts. Retrieved March 14, 2019.

prevailed during this era, the prices of imported goods were higher in England's colonies. Mercantilism is an economic theory that trade generates wealth and is stimulated by the accumulation of profitable balances, which a government should encourage by means of protectionism. Many European nations attempted to accumulate the largest possible share of that wealth by maximizing their exports and by limiting their imports via tariffs.<sup>173</sup> Similarly, the Jones Act of Puerto Rico is a federal law that regulates maritime commerce in the United States. The Jones Act requires goods shipped between U.S. ports to be transported on ships that are built, owned, and operated by United States citizens or permanent residents.<sup>174</sup> Because of this, the Jones Act has been considered a protectionist law by many. Like the Navigation Acts, the Jones Act was designed to create a safe network of merchant mariners within the U.S. after World War I, in reaction to the U.S. fleet being destroyed by the German navy.<sup>175</sup> Also like the Navigation Act, the Jones Act increases the cost of shipping to Hawaii, Alaska, Puerto Rico, and other non-continental U.S. lands that rely on imports by restricting the number of vessels that can legally deliver goods. The supply of American-built, -owned, and -operated vessels is relatively small compared to the global supply of ships, while the demand for basic goods tends to remain constant or grow. This creates a scenario in which shipping companies can charge higher rates because of a lack of competition, with the increased costs passed on to consumers. This leads to consumers taking on more debt in order to finance purchases.<sup>176</sup> The Jones Act and the Navigation Act have two differences between them: the tightening of the laws in Britain in 1764 contributed to the unrest leading to the rebellion of England's American colonies. Their achievement of independence made

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<sup>173</sup> Bloomenthal, A. (2019, June 7). Mercantilism: A Lost Economic Cause. Retrieved on March 14, 2019.

<sup>174</sup> Jones Act of 1917 [(H.R. 9533), Pub. L. No. 64-368],” *PRCAP (PR Citizenship Archives Project)*, Retrieved April 3, 2019.

<sup>175</sup> Dennis, N. A. (2017, September 25). The Jones Act: The Law Strangling Puerto Rico. Retrieved January 23, 2019.

<sup>176</sup> Jones Act of 1917 [(H.R. 9533), Pub. L. No. 64-368],” *PRCAP (PR Citizenship Archives Project)*, Retrieved April 3, 2019.

the first serious breach in the navigation system, and from then on exceptions were increasingly made. The Navigation Act was finally repealed in 1854<sup>177</sup>, while the Jones Act still exists. Secondly, the Navigation Act was imposed during the mercantilist era, while the Jones Act was imposed in 1917, a little before capitalism existed and the U.S converted itself into a manufacturer hegemony.

The pioneering characteristic of colonialism even influenced in the fact that industrial countries that did not had colonies did not economically suffered. Either by direct trade in the margins left by these discriminatory measures or by the system of communicating vessels that the movement of capital and goods established between the colonialist countries and the other industrial countries, each of them got its share in the worldwide unequal exchange. Empirically, it is showed that this share did not depend on size of imperial possessions, but on industrial potential and wage level in each of these countries (and in its colonies).<sup>178</sup> Britain was the first hegemon and the Navigation Acts are a legal precedent of the Jones Act as The Navigation Acts of 1650 and 1651 allowed a national accumulation of wealth as it prohibited the importation into England of all goods except those carried by English ships or ships owned by the producing country, eliminating third-party carriers. Foreign ships were barred from trading in the colonies. It should be noted in all these acts that the colonies were part of the Empire, and thus colonial ships were British ships. It is clear that both acts are similar in character and provisions.

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<sup>177</sup> Britannica, T. E. (2015, April 23). Navigation Acts. Retrieved March 14, 2019.

<sup>178</sup> Emmanuel, A., & Pearce, B. (1972). *Unequal exchange: A study of the imperialism of trade*. London: NLB. p.186.

## V. Implications and conclusion of the Jones Act

This thesis found that the origins of the Jones Act lie on the centuries of international positivist law and how it justified colonialism in “backward” and “barbaric” countries through a “civilizing mission.” With his analysis, Anghie clarified how jurists and theorists of the nineteenth century created special doctrines and norms for the purpose of defining, identifying and subordinating the ‘uncivilized’ with positivist language in relation to colonialism. Positivists fashioned an elaborate vocabulary for belittling non-European people, presenting them as appropriate objects for conquest. Mamdani’s analysis of institutional segregation in British-ruled Africa explains that the purposefulness of it was to recognize native institutions like tribal traditions and customary law as uncivilized. The ‘civilizing mission’ justified the material interests of the colonizer in the colony through this narrative. Similarly, the Jones Act subordinates Puerto Rico with institutional segregation since it is a colony and it is treated as such. Puerto Rico’s colonization has created implications for the island. An implication that the Jones Act has created in the island are its political parties. It is important to emphasize that one of the two most powerful political parties in Puerto Rico faithfully defends statehood. The New Progressive Party, also known as the "Statehood" party believes in full integration into the United States as the 51st state of the union. Their political platform includes that “statehood will complete the full rights and benefits package of American Citizenship, now missing as an American Citizen from in Puerto Rico.”<sup>179</sup> As Ramos states in his book, to keep the new territories, there were two alternatives: accept them as states or

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<sup>179</sup> Regis, J. A., Jr. (1998, July). The New Progressive Party's Point of View. Retrieved March 14, 2019.

govern them as colonial dependencies. The fundamental objection to bringing them in as states was that they would then participate in the government of the American Republic.

As Prebisch, Amin and Emmanuel argued in their respective analysis of unequal exchange, the colonized countries of the “periphery” do not have a natural stagnant economy. The “backwardness” of these colonized countries is not because of their natural lack of development, although this is what the narrative pushed by Ricardo's comparative advantage trade theory tried to justify. Indeed, Puerto Rico took advantage of comparative advantage and participated in the colonial division of labor in which it exported raw materials to the mainland and imported manufactured goods from it. The result is a legal unequal exchange, which Prebisch, Emmanuel and Amin all agree. What they did not agree was the effect of primitive accumulation, which Amin elaborated as a process that occurred prior to the capitalist process of capital accumulation that began with the Industrial Revolution. This accumulation seems primitive, because it formed the pre-historic stage of capital and of the mode of production corresponding with it. This contributed to this amassing of capital. The Industrial Revolution gave the colonist countries an advantage to amass wealth in a different economic system, while its colonies did not. This effect occurred in Puerto Rico since the change of colonizer country from Spain to the U.S also replaced its economic system from pre-capitalist to capitalist. The U.S government removed the Puerto Rican *peso* and replaced it with the dollar. The implementation of American banks brought with it the implementation of the American economic system: capitalism. Puerto Rico's and the United States relationship is an asymmetric one: The US corporations flourish, while Puerto Rico's workers remain stagnant. Amin also expresses that terms like “natural wealth” and “vicious cycles of poverty” show how the poverty of the colonized countries was portrayed as natural and

unchangeable when it was indeed politically established through the Jones Act in the case of Puerto Rico.

Although the Jones Act can be understood in Emmanuel's theory through a comparison between the wages earned in the United States and in Puerto Rico,<sup>180</sup> the U.S. Supreme Court declares it unconstitutional when the Puerto Rican legislature enacts a minimum-wage law like the one in America. This decision is made despite AFL-CIO President Samuel Gompers' testimony that "the salaries paid to Puerto Ricans are now less than half what they received under the Spanish."<sup>181</sup> What this constitutional judgment means in the context of American colonialism is that labor in Puerto Rico had to be cheap for U.S. manufacturers to be competitive in international market. Emmanuel's unequal exchange theory is visible: the American expansionism through manufacturing was partly possible through low-pay labor in Puerto Rico. Furthermore, the Jones Act created fixed prices: U.S. finished products – from rubber bands to radios – are priced 15 to 20% higher on the island than on the mainland. Puerto Rico is powerless to enact any price-fixing legislation.<sup>182</sup>

The Jones Act allowed the U.S to impose regulatory laws in Puerto Rico's economy. In 1976 Section 936 section of the United States Internal Revenue Tax Code allowed U.S. companies to operate in the island without paying corporate taxes. For the next 30 years, until 2006, American pharmaceutical companies took advantage of this tax loophole, to generate unprecedented profits.

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<sup>180</sup> Dávila, J. C. (2017, December 07). PROMESA: Puerto Rico's "Restructure" at \$4.25 an Hour. Retrieved May 2, 2019. Since the Jones Act prevents Puerto Rico from making commerce with any other country in the world than the United States, it prevents its economy from growing. Since the economy does not flourish, wages remain low. Puerto Rico's minimum wage is \$7.25 and \$4.25 for people under 25.

<sup>181</sup> Denis, N. A. (2016). *War against all Puerto Ricans: Revolution and Terror in America's colony*. New York: Nation Books. p.52.

<sup>182</sup> Denis, N. A. (2016). *War against all Puerto Ricans: Revolution and Terror in America's colony*. New York: Nation Books. p.52.

This tax break connects to exclusive trading relations all the colonies had and Puerto Rico still has, giving undue advantage to colonist companies operating in colonies. This free rent is a type of primitive accumulation American corporations received by operating in a U.S colony.

From then on, Puerto Rico experienced a pharmaceutical boom: U.S. pharmaceutical corporations build enormous drug production facilities in Puerto Rico. The island becomes a pill factory. As of 2008, Puerto Rico is the world's largest shipper of pharmaceuticals, accounting for nearly 25% of total shipments. 16 of the 20 biggest-selling drugs in the U.S., are produced in Puerto Rico. In the town of Barceloneta, one Pfizer factory produces all the Viagra consumed in North America (the U.S., Canada and Mexico). In 2002, the combined profits for the ten drug companies in the Fortune 500 (\$35.9 billion) were more than the profits for all the other 490 businesses combined (\$33.7 billion).<sup>183</sup> Since this thesis inquired the origins of the Jones Act of Puerto Rico and not its contemporary implications, this is outside the scope of this research. However, it is in my future agenda to address these questions and implications.

In conclusion, the Jones Act of Puerto Rico came into existence because American expansionists saw the island's natural resources and the advantage of its geographical position for military purposes and reframed them in the colonial guise. With prominent theorists and politicians of the time, their interests gathered and created "merciful" ideologies that fomented colonialism under the impression of dynamic progress. Alfred T. Mahan's naval ideologies in 1890 shaped America's current naval supremacy in the world. His influence was pivotal to Hawaii's annexation as he thought its position was essential for the defense of U.S commercial and strategic interests

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<sup>183</sup> Denis, N. A. (2016). *War against all Puerto Ricans: Revolution and Terror in America's colony*. New York: Nation Books. p.54.

in the Pacific.<sup>184</sup> The fact that Theodore Roosevelt's proposals and doings in his Presidency showed his theses describes how influential Mahan was.<sup>185</sup>

Slavery, colonization and mercantilism were once legally accepted in the international law and although these concepts are condemned today, they exist in other forms and thus shape our current world and economy. The Jones Act is an anachronistic legacy of that. It was created on 1917 and although some members of Congress have legislated for years to amend it or repeal it, nothing has had any success.<sup>186</sup> President Wilson in his Fourteen points expressed his aim for the self-determination of every country of the world. It can be assumed that when he approved and signed the Jones Act, he did so on his premise: since the act granted citizenship, it appeared as if it had not been complete colonization, which was what the anti-imperialists of the time wanted. As this thesis clarified, to provide second-class citizenship, which has been nothing but subjection as long as Puerto Ricans stay in the island where the severe exploitation took place based on unequal exchange and enhanced by primitive accumulation in the form of free rent to those corporations operating in the island: and statehood was not intended or planned behind the Jones Act. After more than a century in their colonial relationship, Puerto Rico continues to be a non-incorporated territory under the United States Constitution.

It was the non-incorporation concept that Luis Muñoz Marín used to create his idea of "hemispheric borderlands." *Estado Libre Asociado* or "Commonwealth" is the current Puerto Rican Constitution that was designed under Muñoz Marín's "grand hemispheric union."<sup>187</sup> He sold

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<sup>184</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.39.

<sup>185</sup> Ramos, E. R. (2001). *The legal construction of identity: The judicial and social legacy of American colonialism in Puerto Rico*. Washington, D.C.: American Psychological Association. p.42.

<sup>186</sup> Carter, J. R. (2010, June 24). H.R.5585 - 111th Congress (2009-2010): Waiver Act. Retrieved March 14, 2019.

<sup>187</sup> Soto-Crespo, R. (2009). The Mainland Passage: Luis Muñoz Marín's Borderland State. In *Mainland Passage: The Cultural Anomaly of Puerto Rico*, pp. 57-81. University of Minnesota Press.

his ideas globally as a new political concept and with Puerto Rico's boom thanks to the "industrialization by invitation" model where foreign industries would develop and expand in the island, people had faith in these progressive and dynamic ideas. Although the economic boom that the Section 936 of 1976 of the IRS made possible happen, it occurred in industrialized zones of the island and therefore, a massive emigration from the rural areas of Puerto Rico occurred. Also, it allowed American monopolies to augment and become economically strong with the island's low tax break and cheap workforce.

Muñoz Marín saw migration as a central component in addressing the economic burdens of the speedy population growth and the political issue of local stimulus on the mainland.<sup>188</sup> Until today, migration composes a great part of the Jones Act since it is the law that allows Puerto Ricans to move to the mainland. Because of the island's current economic status, much see this citizenship granting as a great help, but this thesis has showed why and how Puerto Ricans were granted the American citizenship in the first place. The interests of pivotal actors (President Wilson, Governor Luis Muñoz Marín, Alfred T. Mahan, the anti-imperialist, Congressmen and Senators of the time) were met in a consortium form to create the Jones Act. The Jones Act of Puerto Rico was created to benefit the American empire as a geopolitical outpost in the middle of the Caribbean for the US national security and as an economic outpost for the US corporations to take advantage of colonial benefits of unequal exchange, low wage, and free corporate tax. Very recently because of the humanitarian crisis caused by Hurricane María in 2017, the Jones Act was lifted for 10 days.<sup>189</sup> This is the first time in history that a waiver for this law took place. The fact that this law was

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<sup>188</sup> Soto-Crespo, R. (2009). The Mainland Passage: Luis Muñoz Marín's Borderland State. In *Mainland Passage: The Cultural Anomaly of Puerto Rico*, pp. 57-81. University of Minnesota Press.

<sup>189</sup> Meng, G. (2017, September 28). H.R.3852 - 115th Congress (2017-2018): Humanitarian Disaster Relief Act of 2017. Retrieved March 14, 2019.

lifted for the first time in history during a humanitarian crisis so that vessels from other countries could aid Puerto Rico (and only to be placed back in after 10 days) is very telling: The Jones Act continues to give advantage to the American empire and is not yet deemed ready for its repeal. This research opens the doors for further investigations: How can the Jones Act be repealed?

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