

2005

Successful Wage Moderation: Trust, Labor Market Centralization, and Wage Moderation in Puerto Rico's Experience with Export-Led Development

César F. Rosado Marzán, *Chicago-Kent College of Law*

SUCCESSFUL WAGE MODERATION: Trust, Labor Market Centralization, and Wage Moderation in Puerto Rico's Experience with Export-led Development

César F. Rosado Marzán¹

Readers are reminded that this work is protected by copyright. While they are free to use the ideas expressed in it, they may not copy, distribute or publish the work or part of it, in any form, printed, electronic or otherwise, except for reasonable quoting, clearly indicating the source. Readers are permitted to make copies, electronically or printed, for personal and classroom use.

Abstract

This article details how minimum wage policies in Puerto Rico facilitated labor market centralization to establish a system of labor relations where labor, capital, and the government trusted each other. That trust, in turn, helped Puerto Rican policy makers to curb wage demands from labor unions so that the island was able to maintain competitive wage levels and attract external investment for economic growth. The case of Puerto Rico is contrasted with other successful cases where labor and minimum wage laws helped create comparable labor market centralization and tripartite trust schemes: Sweden and the Indian State of Kerala. In all three cases, unions trusted government and capital claims that wage restraint was in the interest of workers. Wage laws in all three cases gave unions access to reliable economic information and participation in the enforcement of wage policies. As such, the article concludes that neoliberal recipes for economic growth based on busting labor unions and shrinking state involvement in the economy are wrongheaded when put in absolute terms. Wage restraint to maintain competitive labor markets and spur economic growth may be required in many countries, but such policy objectives can be attained with well-crafted labor and minimum wage laws and policies that give workers, their unions, capital, and the government an equal footing in the national negotiating tables.

1. Introduction

Wage moderation, or wage restraint, has been almost universally accepted in academic circles to be important for economic development. It helps curb consumption and accumulate capital, central elements of economic development. Today, this policy guideline permeates academic scholarship and policy circles. John Pencavel, for example, maintains that mandating higher wages is not necessarily a desirable objective for unions in developing economies. Rather, unions should seek to help management maintain high levels of productivity, which are

¹ Ph.D., Princeton University; J.D. University of Pennsylvania.

important for capital accumulation. Increasing productivity may require wage restraint.² However, critics of wage restraint point out that poor countries remain mired in underdevelopment while their workers continue to sacrifice. They see wage moderation as symptomatic of economic backwardness, rather than as a cure. Therefore, even though wage moderation has had intellectual support, skeptics' claims remain reasonable. How can workers know that a policy of wage moderation is required and is in their interests? As Clyde Summers stated, 'Wage restraint is, by definition, accepting less than may appear to be immediately available.'³ Workers and unions best exercise wage restraint when they 'recognize that immediate gains will be eaten up by inflation, lost by unemployment, or be at the cost of later gains from economic growth.'⁴ A question then surfaces: Given that wage moderation policies may be needed, under what conditions can unions and workers trust that their immediate gains will not hinder future ones?

2. Building trust and labor market centralization

Unions seldom exercise wage moderation even when it may be rational to do so.⁵ Medium-term gains in wages for workers can be much higher than short-term losses in wages if capitalists reinvest profits in productive activities. However, unions tend to oppose any immediate sacrifices because they do not trust capitalists to reinvest their profits in productive activities that will benefit workers. Capitalists equally believe that workers may engage in wage militancy shortly after agreeing to exercise wage restraint when they perceive profits to be growing, thereby failing to keep their end of the bargain. We arrive at the proverbial prisoner's dilemma situation. Due to mistrust of what capitalists will do with the profits, unions prefer to exercise wage militancy over exercising restraint, even though militancy may be socially inefficient and detrimental in the medium and long run.⁶

It has been argued that the prisoner's dilemma situation can be solved by third-party mediation in labor relations; most of the time, the third party will be the state.⁷ The state can enact policies and incentives for capital to be reinvested in productive ways, such as through

² John Pencavel, *The Legal Framework for Collective Bargaining in Developing Economies*, in LABOR MARKETS IN LATIN AMERICA: COMBINING SOCIAL PROTECTION WITH MARKET FLEXIBILITY 27, 57 (Sebastian Edwards & Nora Claudia Lustig eds., 1995); JOHN PENCAVEL, THE ROLE OF LABOR UNIONS IN FOSTERING ECONOMIC DEVELOPMENT (World Bank Policy Research Working Paper No. 1469, 1995).

³ Clyde Summers, *Comparison of Collective Bargaining Systems: The Shaping of Plant Relationships and National Economic Policy*, 16 COMP. LAB. L. J. 467, 486 (1995).

⁴ *Ibid.*

⁵ Adam Przeworski & Michael Wallerstein, *The Structure of Class Conflict*, 76 AMERICAN POLITICAL SCIENCE REVIEW, 215 (1992).

⁶ *Ibid.*

⁷ Peter Lange, *Unions, Workers and Wage Regulation: The Rational Bases of Consent*, in ORDER AND CONFLICT IN CONTEMPORARY CAPITALISM 98, 110-113 (John Goldthorpe ed., 1984).

fiscal policies and wage earner funds where investment can be guaranteed to go towards growth-generating activities. State intervention of this type may help unions trust that their immediate sacrifices will lead to future benefits.⁸ In essence, the union must have assurances from the state that it will do its part so that capitalists play theirs. Trust matters in this triangular equation.

A way in which the state can facilitate trust in labor relations is through centralized labor relations, or labor market centralization as I will call it here. Labor market centralization is when the state, national employers' and employees' organizations negotiate at the industrial or national level.⁹ Labor market centralization helps create trust because it puts unions, employers, and the state in a position where they can agree on national strategies. They can establish consensus on the data to be used to design, analyze, and enforce labor market policies. As we will see in this paper, most of the time, such data is either produced by technicians employed by the state or by one of the parties, when the other parties agree on its reliability. By agreeing on the information to be used to design, analyze, and enforce national labor market policies, the parties may then find a common space to agree and negotiate.

A classic example in the literature of labor relations and economic development has been the Swedish experience with 'wages solidarity.' Wages solidarity was a rather complex program instituted by the Swedish government around the 1950s. It concentrated on curbing wage levels in the export industries of the country, while providing some wage increase to those workers in other areas of the economy. The policy was aimed at mainly two things. The first was that, by exercising wage restraint in the export industries, those industries became more competitive. As a result, Sweden's export-led economic program could flourish. These workers were also the best paid workers in the country. Their restraint helped other employers pay higher wages to their low-wage workers, decreasing wage disparities in the country. Economic growth was, as such, equitable under the wages solidarity program.

A less documented, but equally - if not more interesting - example of how labor market centralization has helped exercise wage restraint to promote economic development has been the experience in the Indian State of Kerala with India's tripartite minimum wage committees. These committees helped capital and labor establish minimum wages and enforce them, catering to the needs of both capital and labor.

In this paper, I will detail these two examples found in the literature and compare them to a third case that I find useful, viz. that of Puerto Rico during its experience with the export-led economic program, Operation Bootstrap. It shows that Puerto Rico's tripartite, industrial minimum wage committees helped to design an equitable wage policy where capital's profitability concerns, and labor's wage concerns could be addressed. Even though there are wide and deep differences between Puerto Rico, Kerala, and Sweden as regards their economic, social, cultural, and political structures, they are similar in their labor legal and policy contours and centralized industrial relations, which helped the unions trust to accept wage restraint policies, both for their members and for their national economies.

⁸ See Summers, *supra* note 3, at 487.

⁹ See BRUCE WESTERN, BETWEEN CLASS AND MARKET: POSTWAR UNIONIZATION IN THE CAPITALIST DEMOCRACIES 29-31 (1997).

3. Sweden

Sweden has been noted for having the most organized working class in the world, with more than 80% of its work force being a member of a labor union in the post-War period.¹⁰ The high density of union representation has made the Swedish labor movement unique. Unions in Sweden are considered voluntary associations; they do not require official state recognition to be legally accepted by employers. Union elections administered by a state agency, such as the United States' National Labor Relations Board elections, are not required. Some common law general principles cover unions, 'but apart from that, unions enjoy far reaching freedom of self governance.'¹¹

Three main labor federations represent workers in Sweden. The largest is the *Landsorganisationen i Sverige* (LO - Swedish Federation of Trade Unions), which traditionally represented blue-collar employees and now more than half of the working population of Sweden. The other labor federations are the *Tjänstemännens Centralorganisation* (TCO - Federation of White-Collar Workers) and *Sveriges Akademikers Centralorganisation* (SACO - Swedish Federation of Professional Associations). The LO is officially associated with *Socialdemokraterna* (SAP), the main political party of Sweden. The TCO is not officially affiliated to a political party, but tends to lean towards the SAP. The SACO is strictly neutral.¹²

Employers are also nationally structured in an organization called the *Svenska Arbetsgivareföreningen* (SAF - Swedish Employers Association). The SAF and the LO signed the crucial 1906 and 1938 compromises, which 13 July 2005 provided the groundwork that gave labor relations in Sweden their unique characteristics: high unionization rates, collective bargaining at the national level, mutual acceptance of labor and capital, including labor's acceptance of managerial prerogatives to run the company and management's non-resistance to labor unions in the workplace.¹³ It also led to low levels of strike activity, maintaining labor peace in the country.¹⁴

Collective bargaining in Sweden has been multi-tiered, occurring at the national, industrial, and firm levels.¹⁵ Nationally, bargaining has taken place between the SAF and the employees' federations, the LO, the TCO, and the SACO.¹⁶ In the post-War period, national bargaining took a prominent role after the Korean War. The Korean War led to inflation. Employers wanted to curb inflation by limiting wage increases through a comprehensive plan

¹⁰ REINHOLD FAHLBECK, NOTHING SUCCEEDS LIKE SUCCESS: TRADE UNIONISM IN SWEDEN 10 (1999).

¹¹ REINHOLD FAHLBECK, SWEDEN, in INTERNATIONAL LABOR AND EMPLOYMENT LAWS, Vol. II 10-2, 12 (William L. Keller et al. eds.).

¹² *Ibid.*, at 12-14; 10-35, 10-37, 10-39 (1997).

¹³ *Ibid.*, at 10-11.

¹⁴ Assar Lindbeck, *The Swedish Experiment*, 35 JOURNAL OF ECONOMIC LITERATURE 1273, 1276 (1997).

¹⁵ FAHLBECK, *supra* note 11, at 10-38; Lindbeck, *supra* note 14, at 1282.

¹⁶ FAHLBECK, *supra* note 11, 10-38.

for wage restraint. They wanted to achieve it through national collective bargaining negotiations. The unions accepted to join national bargaining negotiations as long as the SAF agreed to follow the guidelines of the Rehn–Meidner model of wages solidarity, where full employment policies could be materialized while keeping caps on the wages of the better paid workers. Centralized, national bargaining officially ceased in 1992 when the SAF dismantled its negotiating organization.¹⁷

During the time that national bargaining was the norm, Sweden was able to formulate a comprehensive wages policy that influenced industry and local level labor accords. Industrial organizations of capital and labor used the national collective bargaining agreement to draft industry-wide agreements, giving national coherence to industrial relations and collective bargaining. Local bargaining has also been a central piece of the industrial relations system, but it has had to comply with the general national and industry-wide accords.¹⁸ All of these agreements, at all levels, have been legally binding in Sweden.¹⁹

3.1 The Rehn–Meidner model of wages solidarity

There is no statutory norm for wages in Sweden. There are no minimum wages or a maximum amount of working hours laid down in statute, for example.²⁰ However, from 1957 until about 1969 the Rehn–Meidner model was instituted as policy by national labor and employers' organizations, affording pay increases to the lowest paid workers while keeping caps on the pay of the better paid. The policy placed inflation controls to maintain a full employment economy, a goal of the LO. Wage inequality was also curtailed by the policy.²¹

The Rehn–Meidner model attempted to create conditions for full employment in two ways. First, the model facilitated capital accumulation in the better-paid, capital-intensive, large, and export-oriented employers that dominated the SAF and the Swedish economy.²² Capital was then reinvested in productive activities that increased employment levels. Second, the Rehn–Meidner model included an 'active labor market' component to retrain and match displaced workers with new jobs. The idea was that the lowest paid workers, as their pay increased through collective bargaining negotiations, would force the lowest paying employers to either find ways of keeping themselves competitive, or exit the economy. Displaced workers would be retrained and given new jobs. Inflation would be curtailed by maintaining effective demand low through wage moderation at the top.

Wage earner funds were also developed in the 1970s to provide union participation in

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*, at 10-73.

²¹ PETER SWENSON, FAIR SHARES: UNIONS, PAY AND POLITICS IN SWEDEN AND WEST GERMANY 132 (1989); JONAS PONTUSSON, THE LIMITS OF SOCIAL DEMOCRACY: INVESTMENT POLITICS IN SWEDEN 94-96 (1992).

²² PONTUSSON, *supra* note 21, at 96.

the investment of employers' profits. The reasons behind the funds were that workers could only gain from wage restraint if profits were invested in productive activities that led to the creation of jobs. The funds would place profits in the control of unions, guaranteeing that investment would benefit workers.²³

3.2 The politics of Rehn–Meidner's implementation

It took a number of conditions for Sweden to implement the Rehn–Meidner model, including building political capacities to actually effectuate secondary policies needed for the model to work, such as active labor market policies and labor market centralization, which was required to coordinate the activities of capital and labor nationally.²⁴

Clyde Summers commented: 'It is significant that in Sweden the collective bargaining system evolved and functioned while the Social Democrats were in power . . .'²⁵ Without the SAP in power, the likelihood that the policy would have been put into practice effectively would have been slim. In fact, students of Sweden's welfare state have noted that the government was not able to enact, at first, active labor market policies due to opposition from the SAP's coalition partner, the Agrarian Party.²⁶ However, in 1960 the SAP obtained a full majority of the votes and was able to run a non-coalition government. Then it was able to implement active labor market policies. In addition to active labor market policies, the state also created 'wage earner funds' when the SAP gained even more political power. These were directed at guaranteeing profit investment in productive, employment-generating activities.

The Swedish welfare state also smoothened bargaining by providing public goods such as universal health care and education. It also helped approach full employment by employing a significant part of the Swedish workforce, approximately one-third of the total working population, in public sector jobs.²⁷

Moreover, the argument can be made that the unions exercised wage moderation in Sweden because they trusted the policy as being *their* national economic development policy. It is important to note that, in Sweden, no formal 'social contract' or tripartite corporatist system has been established.²⁸ However, an institutional regime for wage policy coherence was developed through the complex interrelatedness of the state and the unions. In many functions, unions and government have been the same when the SAP was in power. As commentators of the LO–SAP relationship stated:

²³ RUDOLF MEIDNER, *EMPLOYEE INVESTMENT FUNDS: AN APPROACH TO COLLECTIVE CAPITAL FORMATION* (1978).

²⁴ PONTUSSON, *supra* note 21, at 64-67.

²⁵ Summers, *supra* note 3, at 487.

²⁶ PHILIP WHYMAN, *SWEDEN AND THE 'THIRD WAY'* 42 (2003).

²⁷ Juhana Vartianen, *Understanding Swedish Social Democracy: Victims of Success*, 14 OXFORD REV. OF ECON. POLICY 21-22 (1991).

²⁸ Axel Adlercreutz, *Sweden*, in INTERNATIONAL ENCYCLOPEDIA FOR LABOUR LAW AND INDUSTRIAL RELATIONS, Vol. XIII, 92-95 (R. Blanpain ed., 1998).

LO and the Social Democratic Party are two huge, complex, partly overlapping bureaucracies, in effect engaged in a never-ending conversation and at times arguments as to what it means to be a Social Democrat . . . They are in fact social bureaucracies penetrating into the life of communities in a way that is difficult for a foreigner to understand. Perhaps the closest analogy is to think of the labor movement as a church with denominations in some disagreement with one another.²⁹

The government's policy was LO's policy and vice versa. How could unions not trust government, then?

Finally, it is important to underline the importance of labor market centralization. Even though centralized collective bargaining was ceased in Sweden after World War I, it was re-established when the SAF wanted unions to return to national bargaining to create a comprehensive wage moderation practice and counteract wage inflation. The unions accepted to rejoin centralized negotiations on the condition that employers accepted the Rehn–Meidner model, which would help the unions pursue a policy of full employment. Thus, the unions would exercise wage moderation in exchange for full employment.³⁰ The employers accepted, and centralization was established as the norm.

The Rehn–Meidner model was put into practice when the unions were persuaded that a policy of wage moderation was required. The unions' persuasion that wage moderation was desirable was facilitated by the fact that the wage restraint policy was linked to full employment strategies the unions desired. The active participation of LO and SAP policy-makers in designing the Rehn–Meidner model also helped labor to acquire trust in politics. It was the LO's policy, after all. Once the unions were convinced of the need for wage restraint, the policy came to further fruition when the SAF pressured for centralized labor relations. The SAF wanted labor market centralization to enforce national wage moderation policies. The LO accepted on the condition that the employers accepted the methods of the Rehn–Meidner policy, which would help guarantee full employment. Finally, the 1960 SAP majority victory helped the government enact the required state policies to make the Rehn–Meidner policy actually work. As such, the unions' trust in the government, centralized collective bargaining, and SAP control of the government were the central pillars of an effective wage moderation policy in Sweden.

4. Kerala

The Indian State of Kerala provides an example of a Third-World location where state-brokered trust helped labor unions to exercise wage moderation to aid development policies. Kerala is an Indian State whose per capita wealth is less than the national average of India; in

²⁹ Lindbeck, *supra* note 14, at 1277 n. 9 (citing HUGH HECLIO & HENRIK MADSEN, *POLICY AND POLITICS IN SWEDEN: PRINCIPLED PRAGMATISM* (1987)).

³⁰ Vartianen, *supra* note 27, at 25 n. 19 (citing H. DE GREER, *THE RISE AND FALL OF THE SWEDISH MODEL* (1991)).

fact, its per capita income compares to that of very poor nations such as Chad or Burundi.³¹ However, its social indicators surpass those of the average Indian State and compares with those of developed nations. For example, the adult literacy rate in the 1990s in Kerala was estimated at 94% whereas it was 65% in the rest of India, and 96% in the United States.³² The infant mortality rate in recent years has been 13 per 1,000 births in Kerala, 65 per 1,000 births in the rest of India, and 7 per 1,000 births in the United States. Given these positive indicators, development scholars have stated that Kerala could be a model for social development for Third-World regions.³³

Sociologist Patrick Heller has argued that Kerala's success has been based on the way in which the state restructured state-society relations from client ties based on caste to more rationalistic political relations based on social class. Kerala was able to perform such a reconfiguration of social relations through a two-step process. The first phase was based on class militancy organized by the Communist Party of India (CPI) in Kerala and its breakaway organization, the Communist Party of India - Marxist (CPIM), and their labor and mass organizations. The second phase included class compromises to attract investments. In the period of class compromise, the unions backed civil servants rather than politicians to play leading roles in the State's wage-setting policies, as mandated by Indian minimum wage law, which is seldom enforced in most of India. These activities contributed not only to effective law enforcement, but also to labor peace and wage moderation, when necessary, helping economic development in the State, as we will see below.

4.1 Unions in Kerala

Unions first appeared in Kerala in the 1920s. They were concentrated in the mat industries, cashew industry, and cotton mills, among others.³⁴ The first trade union was the Travancore Labour Association, organized in 1922.³⁵ The first issues that these unions organized for were not industrial issues per se, such as wages and working hours. Rather, the unions reacted against despotic labor relations based on caste and traditionalistic norms. As Patrick Heller notes, workers '... were active in movements for prohibition, eradication of untouchability and temple entry. It was such movements and not struggles against employers in the factories that agitated the workers.'³⁶ The struggle against caste relations thus put the labor movement

³¹ PETER EVANS, *EMBEDDED AUTONOMY: STATES AND INDUSTRIAL TRANSFORMATION* 239 (1995).

³² Richard W. Franke & Barbara H. Chasin, *Is the Kerala Model Sustainable? Lessons from the Past, Prospects for the Future*, in *KERALA: THE DEVELOPMENT EXPERIENCE* 18 (Govindan Parayil ed., 2000).

³³ Govindan Parayil, *Introduction: Is Kerala's Development Experience a 'Model'?*, in *KERALA: THE DEVELOPMENT EXPERIENCE* 1-15 (Govindan Parayil ed., 2000).

³⁴ K.R. Nairn, *Trade Unionism in Kerala*, in *KERALA'S ECONOMY: PERFORMANCE, PROBLEMS AND PROSPECTS* 331, 332 (B.A. Prakash ed., 1994).

³⁵ PATRICK HELLER, *THE LABOR OF DEVELOPMENT: WORKERS AND THE TRANSFORMATION OF CAPITALISM IN KERALA, INDIA* 171 (1999).

³⁶ *Ibid.*, at note 69, 170, citing K.C. GOVINDAN, *MEMOIRS OF AN EARLY TRADE UNIONIST* 14 (1986).

in a position that directly hit the center of Indian social structure, the caste system, rejecting it and providing the basis for the development of socio-political relations based on a modern, alternative social class.

Once the CPI was active in the 1940s and created the All Travancore Trade Union Congress (ATTUC), a class-based social movement crystallized. The ATTUC led large demonstrations and strikes throughout the 1940s, including a general strike in 1946. Communists quickly took the leading role in Kerala's labor union scene and transformed labor relations in the State. Congress party unions and caste networks did not monopolize labor affairs.

The unions grew in Kerala during the 1950s, increasing the level of class-consciousness in the State.³⁷ Since then, the State has been known for having one of the most organized working classes in India. The unions were also known for their militancy.³⁸ Militancy, however, eventually was blamed for the capital flight from the State, compelling union leaders, State administrators, and political party leaders to develop industrial relations that were more cooperative.³⁹ Collective bargaining, negotiated settlements, and no-strike clauses became commonplace, decreasing the incidence of strike activity.⁴⁰ In fact, during the 1969–1979 period, strike activity was reduced to levels lower than in most of India. Joint consultation and regulation also became major components of collective bargaining. Tripartite Industrial Relations Committees (IRCs) began to be used by the parties more aggressively to establish cooperation.

It is important to underscore that in India employers generally have not resisted unions. They invite unions to the negotiating table. There is also no majority union rule in India.⁴¹ However, in India, as in many developing nations interested in fast-paced economic growth, the state officially has to sanction unions. It used official recognition rules to control them. Coupled with India's pluralistic union structure, the result of government involvement in industrial relations has been that an array of party-union bosses serves as brokers between the state, management, and the workers rather than as legitimate union organizers. This system of bargaining has been called 'involutional pluralism' by experts of labor relations.⁴²

In Kerala, however, things have been different. Given the militancy of the CPI and CPIM militants and their desire to remain independent from government leaders, the government has had to rely on the IRCs, which are run by professional civil servants, not politicians. The reliance on the IRCs has also provided unions in Kerala with independence from the government, making them more responsive to their membership than to government leaders. It has also provided a neutral player to serve as mediator between capital and labor.

³⁷ Nairn, *supra* note 34, at 340.

³⁸ *Ibid.*

³⁹ *Ibid.*, at 342-345; *see also* HELLER, *supra* note 35.

⁴⁰ Nairn, *supra* note 34, at 342.

⁴¹ *Ibid.*, at 342-343; HELLER, *supra* note 35, at 220.

⁴² HELLER, *supra* note 35, at 215, citing LLOYD I. RUDOLPH & SUSAN H. RUDOLPH, *IN PURSUIT OF LAKSHMI: THE POLITICAL ECONOMY OF THE INDIAN STATE* 270 (1987).

These neutral mediators have been the IRCs' administrators, State labor department professional civil servants.⁴³

4.2 Minimum wage policy in Kerala

India's national minimum wage law, the Minimum Wages Act of 1948 (the Act), gives authority to State Governments to convene minimum wage committees and set minimum wages by industry. As such, minimum wages in India need to be set at the State and industrial levels. The Act also lets wages differ by occupational type, giving flexibility to employers when a legal minimum is established.⁴⁴ Recommendations for establishing minimum wages include creating threshold poverty lines that wages must meet or exceed. State governments must also consider the prevailing wage rates in particular employments and in different States, employers' bottom line, skill levels, and work hazards.⁴⁵

Civil servants of the minimum wage committees consult with capital and labor to set minimum wages. Their decisions have the power of law and are not subject to appeal. As such, the civil servants have both legislative and final adjudicative functions when setting wage levels. Neither government nor judicial bodies can influence the decisions of the minimum wage committees. Their professional character in Kerala has made them well trusted. As the IRCs, minimum wage committees are known in Kerala for being non-partisan and professional. People in Kerala sharply contrast the differences between minimum wage committees to public enterprises, which they call 'political fiefdoms.'⁴⁶

Unions in Kerala have also stressed independence from politicians' intervention in labor market policy and preferred the professional civil servants that run the minimum wage committees. One of India's main problems with minimum wage law is enforcement. In India's federal system, the State bureaucracy has the responsibility to implement the minimum wage laws, including conjuring minimum wage committees. Many times, however, States simply refuse to convene a minimum wage committee. Farmers have especially pressured State governments not to enforce the law. In addition, union leaders rarely know the provisions of the law and fail to exercise their rights.⁴⁷

In Kerala, the role of independent, militant but professional union leaders has shaped a different situation than in the rest of India. Given their genuine representation of working class interests, union leaders in Kerala have been better able, if not compelled, to mobilize Indian national minimum wage law. They have used national Indian law as a resource. They have been able to press the State to convene the minimum wage committees and enforce

⁴³ Nairn, *supra* note 34, at 344.

⁴⁴ Chandra Johri, *India*, in INTERNATIONAL ENCYCLOPAEDIA FOR LABOUR LAW AND INDUSTRIAL RELATIONS, Vol. VII, Part II, § 3.336 (R. Blanpain ed.). See also Minimum Wages Act of 1948, Sec. 5, at http://www.indialawinfo.com/bareacts/minwage.html#_Toc502495901 (last visited March 21, 2004).

⁴⁵ *Ibid.*, at §§ 313-314.

⁴⁶ See HELLER, *supra* note 35, at 94 n. 3.

⁴⁷ Johri, *supra* note 44.

Indian minimum wage law.

4.3 The 'minimum wage crisis' of the 1990s

A case in point of how the State of Kerala is able to enforce wage policy effectively is the 'minimum wage crisis' of 1991–1992. There, the CPIM's Kerala State Karchaka Thozhilai Union (KSKTU) exercised wage moderation when a coalition government in the State led by the Congress Party attempted to set minimum wages higher than those set by the tripartite wage committees. A wage committee determined daily minimum wages in agriculture of 25 Rs. for women and 35 Rs. for men. However, the Congress Party's coalition government, in an opportunistic move, tried to increase the minimum wage to 30 Rs. for women and 40 Rs. for men. These wages were higher than those that were accorded by the wage committees.⁴⁸ It was a 'cynical attempt' to raid the voting constituency of the CPIM, which had accorded in the minimum wage committees a 25/35 rate.⁴⁹

Farmers protested, saying that they faced ruin if such wages were promulgated.⁵⁰ Unions, however, were in bind. The Congress party's higher minimum wage recommendations put the KSKTU and the CPIM between a wall and a hard place. They knew that the Congress Party proposal of 30 Rs. for women and 40 Rs. for men was too high because they had been negotiating with farmers and the committees' civil servants to set the wages. They knew the farmers' bottom lines and determined that the 25/35 rates were the best compromise. Anything higher would put farmers in economic arrears. However, if the CPIM mobilized against the 30/40 Rs. rate of the Congress Party for a lower 25/35 Rs. rate, its working-class constituency might have not understood the apparent political backsliding. The CPIM might have lost political support from its base, playing into the trap placed by the Congress Party to raid the CPIM's base.

However, the CPIM and its labor union, the KSKTU never entered a political crisis because the wage committee civil servants decided not to implement the minimum wage rates suggested by the Congress Party government. In fact, the bureaucracy 'endorsed local adjustments' to wage rates to further aid farmers.⁵¹ It met with labor leaders and the farmers to seek support for regional adjustments to satisfy the profit needs of farmers and did not even attempt to raise the rates. As such, the issue was settled without the CPIM losing any worker support.⁵² Labor relations' independence from politicians paid off in Kerala.

The unions trusted the wage policy in Kerala, even when wage restraint was required, because professional career servants, not traditional politicians, handled it. The rates could be properly enforced because, thanks to working-class mobilization in Kerala, the State was forced to make parties comply with the law. Legal compliance also facilitated labor market

⁴⁸ HELLER, *supra* note 35, at 107-108.

⁴⁹ *Ibid.*, 108.

⁵⁰ *Ibid.*, 107-108.

⁵¹ *Ibid.*, 110.

⁵² *Ibid.*, at 110-111.

centralization when the wage committees were convened. Law enforcement not only helped maintain acceptable wage rates for unions, but also for employers, especially during the minimum wage crisis, which could have put farmers in arrears if the law was not properly enforced.

5. Puerto Rico

Puerto Rico was a Spanish colony that passed to American hands in 1898 after the Spanish-American War. Since then, Puerto Rico has been held as an American colony.⁵³ Colonialism notwithstanding, the labor movement had become the leading popular political movement by the 1910s, a result of massive proletarianization, legalization of trade unionism, and arduous organization of workers by the newly formed *Federación Libre de Trabajadores* (FLT - Free Federation of Workers), with some material help from Samuel Gompers' American Federation of Labor (AFL).⁵⁴ Yet, the Puerto Rican economy was mired in poverty throughout the first 40 to 50 years of American administration of the island. By the 1940s, liberal policy makers in the United States and reformers of the *Partido Popular Democrático* (PPD - Popular Democratic Party) of Puerto Rico devised an export-based economic development program to deal with the island's poverty and underdevelopment. The policy for development was called 'Operation Bootstrap.' The program required maintaining lower wages⁵⁵ in Puerto Rico and tax incentives to attract American manufacturing companies. As such, Puerto Rican union militancy was actively restrained by the Puerto Rican state.⁵⁶

American unions, the so-called 'Internationals,' seeing the jobs of their members moving to Puerto Rico in the 1940s and 1950s, began to send organizers to Puerto Rico to organize workers and increase wages. They also began to press the Federal government to fully extend Federal minimum wage laws to Puerto Rico, which until then had provided many loopholes to the island.⁵⁷ International unions reasoned that they could have an influential role over Puerto Rico's development project. They had influence in Washington D.C., and Puerto Rico depended on Federal tax breaks and labor law exemptions for its development policy.

⁵³ Given that Puerto Rico has remained under the Territorial Clause of the U.S. Constitution, a lot of the academic literature has aggressively criticized the 'Commonwealth' as a colonial status. Perhaps the largest blow to the Commonwealth's legitimacy came when Puerto Rico's pre-eminent Supreme Court Judge and prolific legal scholar, José Trias Monge, a historical supporter of the Commonwealth, declared that the island was still a colony; JOSÉ TRIAS MONGE, *PUERTO RICO: THE TRIALS OF THE OLDEST COLONY IN THE WORLD* (1997).

⁵⁴ GERVASIO GARCÍA & ANGEL QUINTERO RIVERA, *DESAFÍO Y SOLIDARIDAD: BREVE HISTORIA DEL MOVIMIENTO OBRERO PUERTORRIQUEÑO* (1986); MILES GALVIN, *THE ORGANIZED LABOR MOVEMENT IN PUERTO RICO* (1979); JUAN ANGEL SILÉN, *APUNTES PARA LA HISTORIA DEL MOVIMIENTO OBRERO PUERTORRIQUEÑO* (1978).

⁵⁵ Simon Rottenberg, *Labor's Role in Industrialization*, 285 *THE ANNALS OF THE ACADEMY OF POLITICAL SCIENCE* 85 (1953). See also GALVIN, *supra* note 54, at 146-165.

⁵⁶ GALVIN, *supra* note 54; GARCÍA & QUINTERO RIVERA, *supra* note 54; SILÉN, *supra* note 54.

⁵⁷ GALVIN, *supra* note 54, at 157.

They also befriended the Governor of Puerto Rico, Luis Muñoz Marín, and backed his policy of wage moderation in return for some space to organize workers.⁵⁸ Below, I will explain how one of the most important of these unions, the ILGWU, backed and exercised the policy of wage moderation in Puerto Rico to its benefit and that of its Puerto Rican members.

5.1 Unions in Puerto Rico

Unions in Puerto Rico first appeared in the second half of the 19th Century. They developed from the brotherhoods and social clubs of artisans that were being proletarianized, mostly in the tobacco industry. Before the US took control of Puerto Rico in 1898 after its victory in the Spanish-American War, Spanish authorities repressed trade-union activity. Strike activity was illegal.⁵⁹ The US, in an attempt to win the hearts and minds of the mass of its new colonial subjects, legalized union activity and secured the civil rights of many Puerto Ricans. Soon thereafter, the FLT began to organize sugarcane workers in the fast-growing sugarcane fields of Puerto Rico with material help from the AFL. The Socialist Party was also founded in 1915 as the political arm of the FLT.⁶⁰

After decades of being unable to win an electoral majority, in the 1932 elections the Socialist Party allied itself with the pro-capitalist Republican Party. Even though the Republicans represented the sugar trusts' interests in Puerto Rico, the Socialists united with them to win the elections. Socialists also wanted to obtain the first industry-wide collective bargaining contract in the sugar industry of Puerto Rico through their alliance with the Republicans. Both parties, moreover, supported statehood for Puerto Rico - that is, that Puerto Rico would become a U.S. federated state - creating further grounds for the coalition.

The Republican-Socialist alliance achieved an electoral triumph in 1932. The Socialists also obtained their long-awaited industry-wide contract for sugar workers. However, the terms of the contract were not accepted by the union membership. Workers rebelled in a general strike against the government and their union leaders. The workers called Pedro Albizu Campos, a lawyer and Nationalist Party leader who favored Puerto Rican independence from the United States, to lead the workers in their rebellion. He was able to negotiate a more acceptable contract for the workers. The Nationalist leader, however, did not continue to lead the workers' movement after the agreement was signed. He sent the workers back to the FLT, claiming that he was 'no labor leader.'⁶¹

With the monopolization of the Puerto Rican economy by sugar trusts and due to the Great Depression, the 1930s and 1940s were years of deep-seated poverty on the island. As a result, New Dealers in the US and their supporters in Puerto Rico, organized under the newly formed PPD, began to develop a new program for economic development called 'Operation Bootstrap.' In the same period, the American-based Congress of Industrial Organizations'

⁵⁸ *Ibid.*, Chapter 9.

⁵⁹ GARCÍA & QUINTERO RIVERA, *supra* note 54, at 24-25.

⁶⁰ ARTURO BIRD CARMONA, A LIMA Y MACHETE: LA HUELGA CAÑERA DE 1915 Y LA FUNDACIÓN DEL PARTIDO SOCIALISTA (2002).

⁶¹ TALLER DE FORMACIÓN POLÍTICA, ¡HUELGA EN LA CAÑA! (1982).

(CIO) local in Puerto Rico, the *Central General de Trabajadores* (CGT - General Central of Workers), an FLT challenger, began to organize industrial unions and urban workers in a way similar to that of its parent in the United States. Seeing the possible surge in militancy that the CGT represented for Puerto Rico, which could have jeopardized the investment climate, the PPD leaders called on the CGT leadership to join the party in its new program for the modernization of Puerto Rico. To join the PPD, the CGT was required to become less militant and use bureaucratic mechanisms to solve labor disputes. The CGT was split on the issue. One side of the CGT favored the PPD whereas the other side did not. The side that remained independent of the PPD was ultimately repressed.⁶²

In the 1950s, when the AFL and the CIO united to form the AFL-CIO, Puerto Rico became a target of the newly united labor movement. Operation Bootstrap was attracting industries from the United States. Many factories were closing shop in the mainland to open in Puerto Rico and benefit from the island's lower wages and tax incentives. As such, the AFL-CIO declared Puerto Rico a 'haven for runaway industry.' It began to send organizers to the island. In this process, the PPD was compelled to find a way to deal with the new, invigorated, labor actors from the North.

5.2 Wage policy in Puerto Rico: The Minimum Wage Board

The PPD's plan for economic development was based on attracting American firms to Puerto Rico through exemptions from Federal income tax laws and by keeping lower wages than on the US mainland. As such, wage moderation became the leading labor policy in Puerto Rico. Wage restraint compelled the government to subdue union claims for wage increases, or repress unions altogether. The Minimum Wage Board (the Board) administered the wage policy. In the Board, labor, capital, and the government set wages and work standards on an industry-by-industry basis.

The Board was composed of nine members: four represented management, four represented labor and one represented the public interest. Furthermore, it hired specialists, such as economists, accountants, lawyers, among others, to study wages, working hours, and labor conditions in Puerto Rico, and make investigations regarding health and safety. It also had the power to subpoena individuals to administer oaths and testimony. It could investigate work sites and compel employers to open their books and records. For purposes of summons and subpoena, it could also compel the collaboration of law enforcement officials, district attorneys, and courts in its investigations. Individuals that failed to provide information could be charged with a criminal misdemeanor.⁶³

The Board did not make the initial assessment of industrial wages. The Board had to name a minimum wage committee to review wages and working conditions in a particular industry, business, or work location. The committees were composed of five members, two representing employers, two representing labor, and one representing the government.⁶⁴ Board

⁶² GARCÍA & QUINTERO RIVERA, *supra* note 54, at 135-136.

⁶³ P.R. LAW 8 of 1941, Secs. 2-5.

⁶⁴ *Ibid.*, Sec. 2.

career civil servants had to produce reliable data to assess the economic situation of firms and industries.⁶⁵

After a committee handed a report to the Board, the Board had to call for public hearings to discuss the report. After the hearings, the Board issued a 'mandatory decree' establishing the minimum wages in that industry. The decree could also establish maximum working hours and health and safety standards. If an employer failed to abide by the decree, it could be charged with a misdemeanor and indicted with monetary fines or imprisonment.⁶⁶ The law also gave district attorneys the duty to prosecute any employer suspected of violating the Act.⁶⁷

The minimum wage committees established the profit margins of firms by studying their books and those of their competitors. Looking at statistical evidence and establishing profit margins, they could assess how much to increase wages in the industry. The Supreme Court of Puerto Rico had the authority to review a mandatory decree through *certiorari*.⁶⁸ In reviewing a mandatory decree, the Court was deferential to the data presented by the wage committees during their evaluation of wage levels. Fraudulent data or irrational conclusions based on the data would prompt courts to overturn a mandatory decree.

For example, in a case decided by the Supreme Court of Puerto Rico, *Sierra v. Puerto Rico Cereal Extracts*,⁶⁹ the Court held that the a mandatory decree was proper, largely in part due to the statistical evidence provided by the committee detailing production costs and competition considerations of the industry. Below, we will see how courts relied on Board data when it commented on the ability of the beer industry to pay wage increases to its workers:

During the year 1952, the four enterprises under study had revenues of \$17,055,577, the total sum of sales being \$11,311,962. The gross benefit was \$5,743,615. Of such gross benefit, there was a deduction of general costs of sale and administration that totaled \$3,052,522, leaving a remainder benefit for operations of \$2,691,093. This benefit of operation equaled 15.8 per cent of the sales and 37.8 per cent over capital and accumulated remainder ...

After summarizing the extensive statistical study in its Determination of Facts, the Board concluded that, 'Due to the previous considerations we believe that the economic situation of the beer industry in Puerto Rico contains a wide enough margin to increase the salaries that it pays to its employees.' ... The Board in every moment considered and had in mind the four companies that produced alcoholic beer and non-alcoholic beer, generally considered as malt. Such four enterprises constituted the beer industry in Puerto Rico. The conclusions of fact

⁶⁵ *Ibid.*, Sec. 6.

⁶⁶ *Ibid.*, Secs. 19-20.

⁶⁷ *Ibid.*, Sec. 24.

⁶⁸ *Ibid.*

⁶⁹ 3 DPR 267, 271 (1961).

reached by the Board, acting on its powers, are conclusive in absence of fraud.⁷⁰

The Court was deferential to the rational methods employed by the Board.

5.3 The ILGWU

The Board was conservative in raising wages. Government representatives in the committees would see to it that wages would not hurt the competitive edge of Puerto Rican wages. As a result, International unions first tried to get the U.S. Congress to extend the Fair Labor Standards Act (FLSA) to Puerto Rico. The FLSA gave many exemptions to Puerto Rico, providing authority to the Puerto Rican government to set minimum wages through the industry-specific wage committees described above. The international unions were not able to persuade Congress to extend the FLSA, however.⁷¹ Nevertheless, to curb criticism of its wage policy, the Puerto Rican government changed the language of the Commonwealth's minimum wage law by passing Law 96 of June 26, 1956 (the Second Act), which called for eventual wage equalization with the US and established a desire for collective bargaining.⁷² The basic wage-setting controls by the Board remained in the new law, however, including the tripartite wage committees and the Board's industry-specific, mandatory decrees.

Politically, the PPD also began to collaborate with some of the international unions. It gave selected international unions a 'free hand' to organize in the island as long as the unions curbed their claims to fully equalize wages with those of the continental United States.⁷³ Once they curbed their wage claims, the PPD and the international unions formed close ties. Increased toleration of each other helped international unions organize Puerto Rican locals in the island.

An example of one of the international unions that was able to maneuver around the Puerto Rican situation to build unions and raise wages, albeit not the level of the United States, was the ILGWU. At first, the ILGWU, like other international unions, attempted to get the U.S. Congress to extend the FLSA to Puerto Rico. However, when Congress failed to do so, the union changed its strategy. It attempted to exert influence on the wage committees of the Board. To exert influence on the wage committees, David Dubinsky, head of the ILGWU, created a personal relationship with Luis Muñoz Marín, the strong man and Governor of Puerto Rico.⁷⁴ In the committees, Dubinsky proposed to set the minima 'a little below what he thought the union could achieve by bargaining.'⁷⁵ This created a slight space for the union

⁷⁰ *Ibid.*, at 271.

⁷¹ *See* GALVIN, *supra* note 54, at 157.

⁷² P.R. LAW 96 OF JUNE 26, 1956, Sec. 1.

⁷³ *See* GALVIN, *supra* note 54, at 159.

⁷⁴ *Ibid.*, at 157.

⁷⁵ *Ibid.*

to obtain ‘minor gains above the stipulated minima’ through collective bargaining.⁷⁶ In this way, the ILGWU leader increased wages as much as he could through the Board and collective bargaining. As Dubinsky wrote in his biography:

I remember when I went to Puerto Rico in 1940 as a member of the first minimum wage board for the island, we found the prevailing wage to be around 5 cents an hour, and in undergarment shops it was 2 or 2.5 cents. And most shops were owned by New Yorkers. One of the employers testified that if we raised the rate to a nickel in the brassiere industry, grass would grow in the streets of San Juan.

When it came to the recommendation of our panel, I decided we should go for a minimum of 12.5 cents an hour for home workers and a rate a few cents higher for those working in factories. Monsignor Francis J. Haas, a public member of the commission, said to me privately, ‘Dave, will you be able to come back to New York if you vote for a rate so much lower than the mainland?’ I said, ‘Father, you and I took an oath. We swore that we would defend the interest of the island as well as the interest of the mainland. If you make it higher, you’re cutting out the possibility for the island to earn anything. And if you make it in the way I’m suggesting, it won’t be what I want but I’ll be able to explain to our members that we raised the Puerto Rican standard by 300, 400, and even 500 percent. So, as a starting point, I’m satisfied.’⁷⁷

The Board and the committees’ reliable information of employer’s financial situation helped the union, as well as the other parties of the Board, determine the limitations that employers had in paying higher wages. As such, the unions accepted to comply with wage moderation.

In Puerto Rico, professional wage-setting instruments helped the unions trust the government’s policy. Labor market centralization was crucial in making the low wage policy work in the island by creating a central bargaining body to set wages. As such, unions were able to obtain some, albeit not all, of the wage gains that they wanted to see through the centralization of labor markets. The government was able to maintain its policy of lower than US-mainland wages to attract industries. Employers participated in the Board because it provided a space where their profitability concerns were addressed. The centralized body did not dull the island’s competitive edge. On the contrary, the Board protected Puerto Rico’s competitive concerns and the general welfare of the island’s economy while giving space to unions to participate in the development process of the island.

6. Conclusion

Although there are many differences between Sweden, Kerala, and Puerto Rico, we can point to the common threads of trust and labor market centralization as the key conditions that helped the three cases enforce a successful policy of wage restraint. In all three cases, trust was generated when labor unions were treated as legitimate power sharers. In the case of

⁷⁶ *Ibid.*

⁷⁷ DAVID DUBINSKY & A.H. RASKIN, DAVID DUBINSKY: A LIFE WITH LABOR 202-203 (1977).

Sweden, the unions trusted government policy because the unions and the ruling party, the SAP, were interconnected; they were almost the same entity. Government policy was union policy, and vice versa. In Kerala, trust was generated through a process of union participation in professionally run minimum wage committees that set wages using objective and reliable information about bottom-line constraints. In Puerto Rico, trust was developed through much similar mechanisms, wage committees of the Minimum Wage Board, where parties deferred to the data and recommendations of experts as a baseline for their negotiations. In Sweden, the political power of labor unions and their participation in state-level, policy-making institutions helped them trust wage restraint policies. In Puerto Rico and Kerala, experts played a more prominent role in brokering negotiations between capital and labor.

In today's world, where both unions and states have been debilitated if not 'busted' by neoliberalism, recommendations for wage moderation with active labor union participation may sound dissonant to some. Why even care about unions? Are not unions ultimately proponents of inefficiency and economic ruin? Why not let the markets do all the work? The experience of other areas that developed with export-led strategies, such as Sweden and Kerala, have shown that state structures and activities matter in the construction of solid and effective labor markets and economies. In this paper, I hope to have shown that the case of Puerto Rico adds further evidence to the importance of state brokerage in development projects, even if these are export-led in scope, casting further doubt on the fundamentalism of hard-line, free-market advocates. The case of Puerto Rico shows that neither unions nor states need to be pitted against 'markets.' Both unions and states can help enforce national-level policies for economic development and the strengthening of markets, with social justice, producing brighter futures for all parties involved.