Patronage as a system of insiders and outsiders: lessons from the Commonwealth of Puerto Rico

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PATRONAGE AS A SYSTEM OF INSIDERS AND OUTSIDERS: LESSONS
FROM THE COMMONWEALTH OF PUERTO RICO

by

Elizabeth H. Pérez-Chiqués

A Dissertation
Submitted to the University at Albany, State University of New York
in Partial Fulfillment of
the Requirements for the Degree of
Doctor of Philosophy

Rockefeller College of Public Affairs and Policy
Department of Public Administration and Policy

2018
ABSTRACT

Although in place for more than 100 years, Puerto Rico’s merit-based civil-service system still does not function to uphold merit as officially intended. Patronage—the disbursement of public resources or benefits in exchange for political support—is a normal and routine part of governing in Puerto Rico. How does a patronage system work within a formal merit-based system? And, what are the mechanisms that keep patronage in place? Through a mixed-method strategy—including in-depth interviews with public employees, limited participant observation, and analysis of political discrimination and public corruption cases—this research aimed to understand: how patronage works, how patronage relates to the formal merit-based system, how public bureaucrats experience and understand patronage (including the informal belief system and rules that sustain it), and the effects patronage has on government bureaucracy, public policy, and, ultimately, social outcomes.

There are three main mechanisms in the clientelism and patronage literatures used to explain how patronage relationships are sustained—loyalty and reciprocity, monitoring, and interest alignment\(^1\)—all based on *insider* dynamics between patron and client. These explanations largely ignore the simultaneous dynamics with *outsiders*, or the individuals who do not get the jobs, who lose their jobs, or whose work conditions are negatively affected because of their real or perceived political affiliation. But a near-exclusive focus on insiders is not only descriptive inaccurate, it also obscures the mechanisms by which patronage may reproduce. This dissertation, instead, models both the preferential treatment awarded to insiders and the prejudicial treatment towards outsiders as inter-related, but distinct, practices that set into motion different mechanisms that contribute to the continuation of the patronage system. Results suggest

that the change in status, and specifically the outsider status, directly contributes to sustaining patronage practices by 1) crystalizing political identity as a basis for group formation and identification; and 2) providing a rationale and justification for politically discriminatory actions against those identified as “others.” Contrary to how we typically think of patronage, as an exchange of tangibles, patronage also relies on emotions, such as hope\(^2\) or a desire for vengeance. In this setting, it is not only the giving of benefits that bind political leaders and public employees together, but the taking away. Modeling the experience of patronage as a cycle, changes how scholars study patronage by building theory about the mechanisms by which patronage self-perpetuates and increasing understanding of the dynamics that allow for the dominance of informal systems—such as patronage—within the legal systems that were established to control them.

Understanding patronage as a system of insiders and outsiders, and the experience of patronage as a cycle also has implications for real-world reforms. The case of Puerto Rico shows the morphing, adaptation, and continuation of patronage practices within the confines of the institutions and processes that were put in place to contain them. Given these patterns, reforms that focus on changing laws (e.g. raising merit to constitutional status) are unlikely to work because laws may not address the underlying patterns and informal power structures of a patronage system or disrupt the mechanisms by which patronage reproduces.

ACKNOWLEDGEMENTS

I want to dedicate this dissertation to my mom, Mercedes Chiqué Braschi, and to Patricia Strach, two of the most influential and positive forces in my life.

Patty, you have been a constant source of inspiration and strength for me. I feel privileged to call myself your student—I have learned so much from you. It has been a great adventure and I look forward to continue working with you throughout the years. Thank you for all the opportunities and all the support.

I also want to thank my two other very supportive committee members: Ellen Rubin, thank you also for your support throughout the years, for introducing me to the public personnel literature, for taking me to my first conference and for my first co-authored paper. It has been a pleasure working with you since the very day I met you. Mitch Abolafia, thank you for providing me with my first experiences with qualitative research. Your class introduced me to the world of ethnography, this deep-felt method that gives me so much. I appreciate how you always challenged me to take my thinking further, and your contagious excitement.

My wonderful colleagues at Rockefeller Institute of Government were instrumental in the last phases of my dissertation. I love being part of the RIG team, our situation room, all the laughter and the hard and meaningful work. Thank you Jim Malatras, Heather Trela, Katie Zuber, Patricia Strach, and Urska Klancnik.

I have the best and most supportive friends and family. Thank you to my Albany friends, really, you are family. Euhnyoung Kim, thanks for being a steadfast presence in my life all these years, for being family. Your presence was crucial during the last months of my dissertation work-- thanks for giving me shelter, food, drinks, and good company while I finished writing my dissertation. I will always be grateful.
Lucila Zamboni, Pavel Terpelets, Heather Bennett, Bethany Slater, you are all so important to me… you have given me so much throughout the years—thank you, I love you all. Thanks to my life-long friends: María Dolores Trelles, Elsa Rodríguez, Evelyza Crespo, Maran Rodríguez, Noelia Vázquez, Alvin Quinones Oppenheimer and Arnaldo Cruz Sanabria. My family—Catalina Rivera Chiqués, Michelle Pérez Chiqués, Adelaida Ortiz Chiqués, Elena Ortiz Chiqués, Ana Ortiz, Annabel Longo, Jorge Ortíz, and Félix Rodríguez. Gracias también a mis muertos: M(á)ma, Manchi y Carlos, Abuelo y Mami Helen, Albertti Rivera Cortés, Karlis Adamsons, and Lara Adamsons.
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Chapter 1. Introduction

November 12, 2012, San Juan, Puerto Rico.

One day after being elected San Juan’s mayor, Carmen Yulín, a member of the pro-commonwealth party, addressed municipal employees in a radio interview: “I want to use this forum to ask “penepé” (opposition) employees to remain calm. If you are going to do your job, if you believe in a vision of a first-class San Juan, of a San Juan with services of excellence, your job is safe. ... There will be no witch-hunt.”³ The local newspaper covering the election ran a headline stating “Carmen Yulín will not fire “penepé” employees.” But, if Puerto Rico has had a merit-based system since 1907, why is it newsworthy that Yulín planned to follow the law?

Although modeled after U.S. federal law and in place for more than 100 years, Puerto Rico’s merit-based civil service system still does not function to uphold merit as officially intended. Patronage, or the disbursement of public resources or benefits in exchange for political support, is a normal and routine part of governing in Puerto Rico. It is a system that thrives notwithstanding the numerous laws and regulations that exist to uphold merit. In Puerto Rico, patronage appears to function at times parallel to the merit system, and sometimes through the merit system’s formal structures, subverting its official intent and allowing for the continuation of unofficial, often corrupt, practices. How does a system of patronage persist despite legal prohibitions? What are the mechanisms by which it self-perpetuates?

³ “Carmen Yulín no despedirá a empleados penepés,” El Nuevo Día, November 7, 2012, https://www.elnuevodia.com/noticias/politica/nota/carmenyulinnodespediraempleadospenepes-1380450/. There are three main political parties: the pro-Statehood New Progressive Party (PNP, acronym in Spanish), the pro-Commonwealth (status quo) Popular Democratic Party (PPD, acronym in Spanish), and the pro-Independence, Puerto Rican Independence Party (PIP, acronym in Spanish). The two majority parties, PNP and PPD, have been alternating power since the 1960s. I will refer to the PNP as pro-statehood and PPD as pro-commonwealth, throughout the dissertation.
Existing literature overwhelmingly answers questions about why patronage exists, or, alternatively, on studying the macro-level effects of patronage or corruption, such as its relation to inequality or poverty. Comparatively fewer studies have focused on how corrupt systems function, and even fewer have focused on how job patronage works. To more fully understand why patronage persists we need to first understand how it functions. For example, how exactly are the merit system’s processes manipulated? What are the rationalizations that sustain the system? What are its informal rules, processes and power structure? Although it is difficult to study behaviors that are unethical or illegal, knowing how a particular system of patronage functions is essential to understanding the mechanisms by which it persists and reproduces. Additionally, understanding how patronage persists is important in order to add context and specificity to a literature that is characterized by broad generalizations, and in order to identify viable prospects for reform.

When the literature has looked at how patronage functions, it has focused on the insiders, or those involved in the direct exchange of jobs for political support (e.g. Oliveros, 2013). For the most part, the literature has not systematically addressed the experience or the role of the outsiders—or of the individuals who do not get the jobs, who lose their jobs, or whose work conditions are negatively affected because of their real or perceived political affiliation—or the

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effect of outsider status on the maintenance of patronage systems. What happens to people on the outside? How are they affected by patronage, through political discrimination against their party? Political discrimination, in this context, refers to the set of practices used against outsiders, or members (actual or perceived) of the opposing political party, including: politically-motivated firings, demotions, political harassment, and other practices meant to make intolerable the work conditions of employees because of their political affiliation. I argue that it is essential to understand how patronage works and, further, to see it as a system of both insiders and outsiders. By not addressing the experience of outsiders and the dynamics involved in political discrimination, the literature provides an incomplete account of patronage systems that obscures the mechanisms by which patronage may reproduce.

In the example above, Yulín as the newly elected mayor from the Popular Democratic Party (PPD), directly addressed the fear loss of jobs and other politically-motivated adverse actions of municipal employees associated with the opposition party (outsiders). These fears are based on longstanding and widespread practices whereby employees’ working conditions are contingent on their actual or perceived political affiliation. Although scholars in Puerto Rico have called attention to the widespread manipulation of the merit system, to the prevalence of politically discriminatory practices, including practices experienced by outsiders, and to the costs associated with these practices, these authors have not addressed the role of these practices in the maintenance of the patronage system.

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7 Yolanda Cordero-Nieves et al., *El discriminé político en el empleo público* (San Juan, PR: CEMGAP, 2016).
8 There are three main political parties: the pro-Statehood New Progressive Party (PNP, acronym in Spanish), the pro-Commonwealth (status quo) Popular Democratic Party (PPD, acronym in Spanish), and the pro-Independence, Puerto Rican Independence Party (PIP, acronym in Spanish). The two majority parties, PNP and PPD, have been alternating power since the 1960s.
The literature on patronage has scarcely focused on patronage’s exclusionary and discriminatory aspects, instead looking at the favoritism that is expressed through patronage actions. This is evident in the manner in which job patronage is defined as synonymous with the beneficial exchanges characteristic of patronage-based systems, whereby jobs are given in exchange for political support. The way that patronage is commonly defined and modeled directs attention to the insiders. These definitions ignore the experience of the outsiders that is also a crucial component of patronage systems: an experience characterized by exclusion,\(^\text{10}\) conceivably fueled by distrust, prejudice or notions of political revenge. To understand a patronage system, both the preferential treatment awarded to insiders and the prejudicial treatment towards outsiders—those betrayed by the formal personnel system and the informal patronage system—need to be understood as inter-related but distinct practices.

Thus, although the literature discusses why patronage occurs and what effect it has, it cannot equally answer questions about how it functions. What is it like to be an outsider in a patronage system? What do outsiders learn about their roles in government? About their relationships with the insiders? What happens when outsiders become insiders?

My dissertation project integrates both favoritism and political discrimination within the same model. To understand a patronage system, I argue both the preferential treatment awarded

\(^{10}\)Mustafa Bilgehan Ozturk, “Corruption, Job Patronage, and the Political Economy of Human Capital Investment” (Dissertation, University of Chicago, Department of Political Science, 2005).
to insiders and the prejudicial treatment towards outsiders need to be understood as inter-related but distinct practices that set into motion different mechanisms, contributing to the continuation of the patronage system.

Different from how it is commonly portrayed in scholarly literature, I model the experience of patronage as a cycle, whereby public employees experience periods of being benefited or punished by the system, as political parties cycle in and out of power. The work conditions and career possibilities of public employees change in tandem with their parties’ status. When a party is in power, its members are viewed as insiders and have greater possibilities of experiencing or obtaining positive work conditions. When a party is out-of-power, its members are viewed, just as their party, as outsiders and are more likely to experience negative changes to their work conditions, including political discrimination and politically-motivated harassment.

Modeling the experience of patronage as a cycle suggests different reasons for why patronage persists and different implications for reform, making both theoretical and empirical contributions to the field. My findings suggest that experiencing the change in status, and specifically the outsider status, directly contributes to sustaining patronage practices by 1) crystalizing political identity as a basis for group formation and identification; and 2) providing a rationale and justification for politically discriminatory actions against those identified as “others”—people become more politicized. The insider or outsider status and experiences become cumulative and mutually reinforcing. Employees learn to expect privilege or discrimination depending on their status, and they learn to favor and to discriminate based on political affiliation. This is a departure from models that portray patronage systems as composed of pyramidal structures bound by ties of loyalty and reciprocity; fear of punishment; or alignment
of interests. My research shows how patronage is normalized as public employees go through alternating and repetitive cycles of being benefited or punished by the system; and, in this way, increases understanding of the mechanisms by which patronage and other corrupt practices self-perpetuate. Different to how we typically think of patronage, as an exchange of tangibles (jobs, contracts) for political support—patronage also relies on emotions, such as hope or a desire for vengeance. In this context, the giving of benefits as well as the taking away bind actors in a patronage system together. Furthermore, these patterns respond to specific structures and a system of power, that I will detail throughout the dissertation.

1. What can we Learn from the Case of Puerto Rico?

Puerto Rico is the best-case scenario for reform, adopting US federal merit-based system in 1907 and continually reinforcing civil service laws in state and federal court cases. At the same time, however, patronage and politically discriminatory practices have become systemic and normalized.

Puerto Rico’s shared colonial history with Latin American countries, as well as the imposition of the U.S.’ legal and political framework since 1898, which distinguishes it from the rest of Latin America, makes the case of Puerto Rico relevant to the U.S. experience as well as to countries with similar historical backgrounds. Also, the case of Puerto Rico is relevant for increasing understanding of efforts to transplant the merit system as well as other programs or systems to countries with different historical trajectories or political cultures. If it has been more than 100 years since the implementation of the civil service system, and patronage still is a normal part of governing in Puerto Rico: what can we learn about what drives patronage and what inhibits reform?

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The Experience of Patronage in Puerto Rico

During the early stages of the interview and coding process, the cyclical nature of interviewees’ experience became evident: their work conditions fluctuated according to their party’s insider (in-power) or outsider (out-of-power) status, sometimes dramatically, and each experience reinforced different rules of the informal system. Coding and analysis of both interview transcripts and political discrimination cases were done along this insider-outsider experience, starting with the interviewees’ entry into the system, and treating changes in political administrations as pivotal points for status changes (e.g. from insiders to outsiders).

The interviews and court cases suggest that patronage is a normal part of governing in Puerto Rico, a theme which was reinforced in the informal fieldwork. The system in Puerto Rico resembles the types of patronage exhibited in other Latin American bureaucracies, which are heavily influenced by personal (amiguismo) and political relations, and where merit and patronage coexist for long periods of time. In this highly politicized system the merit-based formal incentive system becomes compromised or nullified by an alternative, dominant incentive structure, which is one that responds to political considerations and that counters the ideal of civil servants’ neutrality. This informal system works through the manipulation of the formal merit-based system, when informal and formal systems are integrated and institutionalized, the informal system has the full capacity of the formal system, enabling state actors to draw the resources from both.


\[13\] Cordero-Nieves et al., El Discrimen Político en el Empleo Público.

Patronage and patronage systems are usually seen in terms of a benefactor (be it political party, or individual politician) giving jobs, contracts or any other public good in exchange for political support. My dissertation suggests that there are self-sustaining patterns whereby mistreatment is treated as a type of currency. Insiders have immunity in mistreating the “others,” and that in itself is a measure of power that is given, awarded those that are aligned with the political party in power. In a patronage system so constrained by the civil service, federal protections and the fiscal condition of the Commonwealth, I find that experiencing the change from an insider to an outsider status fuels the patronage system. Partisanship— which is the basis for the informal incentive system within the agencies— is a powerful basis for group formation and identification. Given that social identity is a factor that energizes and directs behavior, it can lead to discriminatory attitudes and actions towards the out-group and to favoritism towards the in-group.\(^{15}\) Interviewees expressed a range of responses to the experience of political discrimination, including: general distrust toward their out-group\(^{16}\); becoming more active politically; feelings of entitlement (e.g. expect benefits when their party is in power because of past grievances); desire for revenge (personally, if they have the power to; or expecting their group to discriminate against others when in power). Political discriminatory practices against outsiders (e.g. political harassment, politically-motivated firings) are being used as an alternative and complement to the favoritism of job patronage and serve to appease supporters’ past grievances or desire for retaliation.

Even when the party representative (e.g. political appointee) cannot give, he/she can take


\(^{16}\) Or use of other negative adjectives: “evil,” “stupid,” “uneducated,” “ignorant,” “assholes,” “cannot be trusted,” etc. And in court cases and social media, “vermin,” “cockroaches,” among other equally pejorative adjectives.
away. Some researchers argue that job patronage is a less than ideal form of patronage; it is expensive, difficult to manage, inflexible, indivisible, and cannot be easily taken away from the recipient.\textsuperscript{17} Some of the manifestations of political discrimination—such as taking away responsibilities from employees based on perceived or actual political affiliation—can be much subtler and harder to identify and to prove than patronage practices in the form of hiring or transferring employees. These practices are “cheap”, flexible, and can potentially render public sector jobs as an inexhaustible source of political patronage. I argue that these practices serve the same purposes regarding political control as job patronage and contribute in this way to the adaptation and continuation of the patronage system.

Different from most of the literature, my dissertation models patronage as a system of insiders and outsiders and looks at the experience of patronage as a cycle, whereby the alternating and repetitive cycles of being benefited or punished by the system, reinforces the informal patronage system. It addresses the role of political discrimination in a patronage system and integrates both favoritism and discrimination within a unified model. Studying these components separately, or ignoring either, provides an incomplete account of patronage systems.

This dissertation shows how a patronage system persists despite legal prohibitions and analyzes the mechanisms that keep patronage in place. The findings of this dissertation highlight: (1) the importance of expanding the scope of study of particularistic systems (patronage, clientelism), from those that are directly involved in the exchanges to the simultaneous dynamics involving those that are excluded. In this case, I delimited the “outsider” as a status to those employees that were politically discriminated against when their party was out of power, but in

\textsuperscript{17} See for example, Michael Johnston, “Patrons and Clients, Jobs and Machines: A Case Study of the Uses of Patronage,” \textit{American Political Science Review} 73, no. 2 (1979): 385–398; Ozturk, “Corruption, Job Patronage, and the Political Economy of Human Capital Investment.”
other settings, outsiders might include groups that are systematically excluded from government jobs or government benefits (based on partisanship, ethnicity, or any other factor), individuals that are not part of any patronage or clientelistic network, maybe for much longer periods of time. The case of Puerto Rico has the benefit of the prevalence of these dynamics given the frequent alternations in power of two political parties that heavily rely on patronage practices to maintain and wield power, but these dynamics, might also be at play in other settings, but not as readily identifiable; (2) the importance of studying and understanding the informal systems and power structures in place when crafting and implementing policies in public personnel management; and (3) the importance of understanding how patronage (or other types of corruption) work, in order to understand how it continues and what effects it has.

2. Methodology

In order to address questions about how patronage functions and why it persists, I conducted 29 interviews with 23 individuals, including former and current political appointees and trust employees, former and current career employees, career employees that were active in public employees' political groups, and government contractors. I conducted in-depth interviews from December 2014-August 2016, and they lasted from 1.5 to 3 hours. There were follow-up conversations with some of the interviewees, and follow-up interviews after the Puerto Rico 2016 elections, which resulted in a change of political administration. There were follow-up conversations and interviews with six of the 2014-2015 interviewees, after the Puerto Rico 2016 elections, an election which resulted in yet another change of political administration.

Additionally, numerous informal conversations (lasting 15-40 minutes) were also held with former or current public employees, former high-level political appointees, government contractors, politicians, press members, and regular citizens that provided a variety of viewpoints
that provided additional context to the study.

To learn more about the landscape of political discrimination and to understand systematically the ways in which it operates, I analyzed 50 randomly selected political discrimination cases in the Commonwealth of Puerto Rico, which represent 10% of the total political discrimination cases in Puerto Rico in the Westlaw database (for details on the selection and list of analyzed cases, see Appendices III and IV.). The cases provide an extremely rich record of how the informal patronage system is experienced when one’s party is out of power, as well as of the logic of the patronage system as reflected in both defendants’ and plaintiffs’ rationalizations, as well as in judges’ analysis of the evidence.

Finally, I conducted in-depth case docket research of an additional 12 selected political discrimination cases using the Public Access to Electronic Court Records (PACER) system. Selection of these cases was purposeful—cases that made it to trial, where witnesses were deposed and testified, where evidence was examined. The court transcripts, depositions, and evidence of the selected cases were examined in depth, with the objective of collecting information that was very hard to gather through the interviews, especially as it relates to the work of political groups working within state agencies, their work of political surveillance, and the work of human resources personnel in support of politically-discriminatory objectives.

3. **Patronage as A System of Insiders and Outsiders**

The insider or outsider status and experience are not static, but dynamic and cumulative. When career employees go through alternating and repetitive cycles of being insiders and outsiders as the political environment changes, the insider or outsider status and experience becomes cumulative and mutually reinforcing. There is an overarching tit-for-tat logic that surpasses the dyadic relationships and intra-group networks on which the patronage literature tends to focus.
Although political parties in Puerto Rico seem to be ideological and programmatic at face value. They are based on their ideological position regarding the type of relationship that Puerto Rico should have with the U.S.: independence, statehood, or commonwealth (status quo). The two main political parties, the pro-Statehood (New Progressive Party (NPP)) and pro-Commonwealth (Popular Democratic Party (PDP)) parties are characterized in the literature as political machines, as one-issue parties with no other ideological differences than their stance on US-PR relations, that compete for the same voters, and that are almost exclusively preoccupied with winning elections and administering the government for their own benefit.¹⁸ The way in which they have amassed and maintained support has been through particularistic linkages,¹⁹ based on their strategic use of public jobs, public services and works, and direct transfers to the poor (mainly funded by federal dollars).²⁰ Furthermore, these particularistic practices might be reinforced and exacerbated by Puerto Rico’s persistent high levels of poverty, income inequality, and inflated public sector, all macro-level factors that are correlated with patronage and corruption.²¹

Since the 1970s, the two main parties have alternated power at the state level generally every four to eight years, which is accompanied by an extensive shifting of personnel and a redistribution of trust, power, resources, and access to members or supporters of the in-group in

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¹⁹ Meléndez., “El Estudio de los Partidos Políticos en Puerto Rico.”
²¹ The percent of the population below the poverty threshold in Puerto Rico was 2.99 times that of the States’ average (45.1% vs 15.1%) (U.S. Census Bureau,”2012-2016 American Community Survey 5-Year Estimates”), its income inequality was higher than any U.S. state or territory, except for the District of Columbia; and employment in the public sector, specifically in the State government, was five times the national average (20%-25%) (U.S. Census Bureau., “Household Income for States: 2010 and 2011,” American Community Survey Briefs, 2012). The widespread poverty, inequality and scarcity of jobs as well as the history of political discrimination contributes to the issue of job patronage and political discrimination being discussed within the frame of human and civil rights by Puerto Rico scholars and civil rights organizations.
power or the insiders.\textsuperscript{22} As a government contractor expressed, “the government \textit{is} one party four years, and the other party, the other four.”\textsuperscript{23} But, the shifting of personnel takes place within the confines of the merit-based system and of state and federal constitutional protections. Courts noted that initial waves of political discrimination cases in the 1980s involved outright dismissals of employees, while subsequent waves involved a more complicated type of discrimination, consisting of adverse actions “less final and definitive than dismissal.”\textsuperscript{24} As a former political appointee explained, “the problem is that hiring into public service is done based on political qualifications, but when you want to get rid of them, all these federal protections kick-in.”\textsuperscript{25} And it is then that one can see the strategies insiders take to make career employees outsiders—including harassment, hostile work environments, stripping of functions, and the sophisticated and subtle manipulation of the civil service processes. These cases represent enormous difficulties for the courts, arising “from the need to sift out the chaff of minor irritants and frustrations from the wheat of truly significant adverse actions.”\textsuperscript{26}

These patterns of personnel management were further complicated by the decentralization of human resources in 2004,\textsuperscript{27} which resulted in 118 “individual administrators”

\textsuperscript{22} Colón-González, “El Discrmen Político en el Empleo Público Mediante la Manipulación de los Sistemas de Mérito”; Segarra-Almésta, “Factores que Inciden en el Mal uso de los Recursos del Gobierno y la Corrupción en Puerto Rico”; Cordero-Nieves, “El Estudio del Discrimen Político en el Empleo Público: Desafíos Iniciales.”; Cordero-Nieves et al., \textit{El Discrimen Político en el Empleo Público}: William Vázquez-Irizarry, “Aspectos Legales del Discrimen Político en Puerto Rico: Cinco Propuestas que Apuestan por la Transparencia” (XVII Congreso Internacional del CLAD sobre la Reforma de Estado y de la Administración Pública, Cartagena, Colombia, 2012).\textsuperscript{23} Contractor / career employee.\textsuperscript{24} Agosto-de-Feliciano v. Aponte-Roque, 889 F.2d 1209 (1st Cir.1989); See also Nieves-Villanueva v. Soto-Rivera, 133 F.3d 92 (1st Cir. 1997).\textsuperscript{25} Former high-level political appointee. Although entry into the system is also protected, it is even harder to prove that there was political discrimination.\textsuperscript{26} Agosto-de-Feliciano v. Aponte-Roque, 889 F.2d 1209 (1st Cir.1989); See also Nieves-Villanueva v. Soto-Rivera, 133 F.3d 92 (1st Cir. 1997).\textsuperscript{27} “Section 5.2. — Individual Administrators. —” (3 L.P.R.A. § 1461d). The following agencies shall be Individual Administrators:
1. All those agencies originally constituted as such by their organic acts, or subsequently turned into such by virtue of executive directives approved by the Governor.
2. All permanent commissions or commissions of indeterminate duration created to address specific situations or to conduct special studies.
of human resources in the executive branch, in addition to the 78 municipal governments. These individual administrators had broad powers in managing their human resource policies, and the implementation of the law resulted in the rapid growth of the bureaucracy.\textsuperscript{28}

Longstanding and widespread practices of manipulating the merit system—of hiring and promoting along party lines, of “screwing-in” (atornillar) or seeking tenure for party loyalists in career appointments, of blanketing-in transitory employees into career appointments through legislation, and of bloating the governmental apparatus by appointing directors and supervisors over the career directors and supervisors of the other party became more rampant,\textsuperscript{29} creating a politicized bureaucracy with cohorts that collectively experience the insider/outsider status. As a former human resource director explained, this law gave these individual administrators faculties that they had never had—they could change salary scales, grant days off without discounting from employees’ accrued days—it gave them power, in his opinion, it “prostituted the public personnel system.”\textsuperscript{30} As evidenced in the interviews and court cases, the 2004 decentralization of human resources created multiple gatekeepers with which to negotiate entry into the civil

\footnotesize{3. All agencies denominated as such by Section 5.3 of Act No. 5 of October 14, 1975, as amended, known as the Public Service Personnel Act, at the time of approval of this Act.
4. The Department of Education to this end, Section 1.07 of Act No. 68 of August 28, 1990, is hereby amended.
5. The Drug Control Office (to this end, Section 1 of Act No. 3 of March 13, 2001, is hereby amended).
6. The Office of the General Social and Economic Financing Coordinator (to this end, Section 3 of Act No. 1 of March 1, 2001, is hereby amended).
7. Any other agency of the Executive Branch that receives its budget appropriations from the general fund, except for those expressly excluded by Section 5.3 of this Act,” (Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico, P.R. Act No. 184 of August 3, 2004, as amended).
30 Human Resources Director / career employee.
service. As many interviewees observed, there has been a marked deterioration of the personnel system and of public administration more generally. The decentralization of the system might account, to some degree, for the marked deterioration of the personnel system commonly noted by interviewees.\(^{31}\)

The body of permanent career employees, especially those in supervisory and managerial positions, is sometimes collectively referred to as “the permanent government,” or the “immovables,”\(^{32}\) and is largely divided between the two major political factions, the pro-Statehood party (PNP) and pro-Commonwealth party (PPD): “The political turnaround, coupled with the economic crisis, created ruthless competition for public jobs among the followers of the major parties.”\(^{33}\) As a witness in a legislative investigation explained, there were no problems while the Popular Democratic Party had the monopoly on power, but when the New Progressive Party won for the first time, “they appointed supervisors to supervise those of the Popular Democratic Party. When the Popular Democratic Party wins again, they appointed supervisors to supervise the supervisors of the New Progressive Party that were supervising the PPD employees. In this process... that career system was lost.”\(^{34}\) These practices resulted in a layered system, with “a blue layer (pro-Statehood color), over a red layer (pro-Commonwealth color), over a blue layer, over a red layer”\(^{35}\) —corresponding to the “cuatrienio” (four-year period

\(^{31}\) This is consistent with Ríos (2013), who shows how the decentralization of certain functions of the Mexican federal government, disrupted pre-existing, stable arrangements between formal and informal institutions (in this case, with Mexican cartels). The decentralization of the system caused unforeseen disruptions to the informal agreements in place, resulting in an explosive increase in cartel-related violence Viridiana Rios Contreras, “How Government Structure Encourages Criminal Violence: The Causes of Mexico’s Drug War.” (Dissertation, Harvard University, 2013).

\(^{32}\) In Spanish, “los inamovibles.”


\(^{34}\) “Transcripción Vista Pública, Comisión Especial para el Estudio de las Normas y Procedimientos Relacionados con la Compra y Uso de Petróleo por la Autoridad de Energía Eléctrica,” Celebrada el martes, 2 de febrero de 2016, Presidida por el Hon. Aníbal J. Torres Torres, p. 117.

\(^{35}\) Former Governor Fortuño also referred to the career system as a “lasagna” with one blue layer (the NPP color), over a red layer (the PDP color), over a blue layer, over a red layer (“Insiste en un gobierno más ágil,” El Nuevo Día, February 16, 2011). See also, “Transcripción Vista Pública, Comisión Especial para el Estudio de las Normas y
corresponding to the time that an administration is elected for) of recruitment. These are the employees that can facilitate or obstruct policy implementation, as former Gov. Fortuño expressed, the major obstacle to carrying out his policies were not his political adversaries, “but the ‘permanent government,’ that structure that remains the same ‘cuatrienio’ after ‘cuatrienio’ in every government agency.” As a current career employee told me, “these are people you are going to have in the inside, they are going to militate for you, they will leak information to you, they will respond to you... the ones that will move work forward or fuck up the work... They are the people that control...”

This layered system is crucial to understanding the form the informal patronage system takes in Puerto Rico. The party that has the greatest number of loyalists in the permanent government, in the career system, has more control, has more power. As another career employee and former political appointee with more than 30 years of work in government explained, “everyone has a quantum of power:”

The partisan politics component is present at every organizational level, from the local offices to the central offices. From the positions in the lowest pay grades like clerks, janitors, or secretaries, to the positions in the highest pay grades like specialists or the directors of finance and budget. And any technical personnel, purchasing, etc. So everyone in their area has a quantum of power that can be larger or smaller, but that is the quantum that corresponds to me, that is mine. And inside that hierarchy... some maybe purchase or issue checks to the people of the party, versus those at another level award

Procedimientos Relacionados con la Compra y Uso de Petróleo por la Autoridad de Energía Eléctrica,” Celebrada el martes, 2 de febrero de 2016. Presidida por el Hon. Aníbal J. Torres Torres, p. 117.


37 Career employee / political appointee.

38 When their expectations are not met, this permanent government (the red layers, the blue layers, or both) can thwart an administration’s agenda through active obstruction or immobility, explained various interviewees— “se van de brazos caídos,” (“fallen arms”) refers to this purposive, reactive, undermining of an administration’s agenda by inactivity.
contracts of millions of dollars to people of the party. That’s why I mention the hierarchy, the ones in the high hierarchy are the ones that contract X and the ones on the low hierarchy are the ones that issue the checks. And this contractor subcontracts people that can be the friends or the children of this people of the party. .... so all this network exists to benefit ones or others inside the government... It is... unstoppable... ³⁹

When analyzed using the official merit system tools, such as official job descriptions, many positions, especially low- or mid-level positions (including managerial, supervisory or technical positions), do not formally meet the “appropriateness of a political affiliation requirement” for their management—and courts might determine that these positions are “so remote from advancing or thwarting the agency’s partisan-responsive goals that political affiliation would not be considered an appropriate requirement.” ⁴⁰ Nonetheless, the logic of the informal system justifies this pursuit of the political parties for the control of the career system at all levels. In order for the informal network to function, political parties need/aspire for someone politically trusted at every level, in every office—political affiliation establishes the basis for trust and the basis for the informal network.

This informal network is important when the party is in power (to get things done) and when the party is out of power (to obstruct, surveil, and leak information). It is, as Oliveros notes, not only the exchange of political support for a job, but the continuous expectation of political work from the ones that received the jobs, and, in this case, the politicization of their official tasks, often in very subtle ways, using their “quantum of power” to favor “their people.”

There are also large numbers of transitory and irregular employees that are commonly

³⁹ Career employee / political appointee.
⁴⁰ Angueira v. Arias, 649 F. Supp. 299 (1986), Civ. No. 85-995. The court cases reflect the clash between the expectations of the formal system and those of the informal system’s expectations regarding many positions, especially low-level positions, the courts repeatedly find that there was no basis for the inclusion of political affiliation in the management of these employees.
⁴¹ Transitory employees can include managerial-level positions, program specialists, among others.
used for patronage purposes, who are more vulnerable to being fired based on their political affiliation when there are changes in administration, although these are also illegal actions. The work conditions of the tenured, transitory and irregular employees who belong or are perceived to belong to the political party that is out of power (outsiders) can change negatively, ranging from no advancement in their position, to political harassment, to job loss. These negative actions toward outsiders, or employees from the opposition, are at the center of political discrimination cases.

Although I describe the patronage system as one of insiders and outsiders—in a particularistic system there are always insiders and outsiders—these are not static statuses, nor should they be treated as such. At the individual and collective level, being an insider or outsider, is a transitional state mediated by the results of elections. It is repetitive, unless individuals completely exit public service (this includes contracting with government). Understanding the experience as cyclical allows for understanding, not only the experience of being benefited or being punished (and the mechanisms at play), but the effect of the change in status, of being benefited and then being punished. Consistent with the literature on organizational socialization, the socialization tactics to which organization newcomers are subject to, influence the outlook they subsequently adopt. Additionally, role transitions (in this case, informal role transitions), are periods during which individuals are more susceptible to influence.


43 Oliveros distinguished between transitory and career employees when analyzing the political services provided by public employees in Argentina. I found this distinction useful because employees’ classification place them at markedly different levels of vulnerability in terms of politically discriminatory actions.

44 The practice of “screwing-in”—or attempting to secure the tenure of party members in public jobs—is seen as a reaction to the custom of the prevailing party to “terminate, demote, or reduce the salaries of employees affiliated with the outgoing opposition party” (Morales-Santiago v. Hernandez-Perez, 488 F.3d 465, 466-67 (1st Cir. 2007)).

I model the experience of the patronage system as a cycle whereby the status of public employees shifts in tandem with the changing status of their political party as the parties cycle in and out of power.  

Based on the analysis of the interviews and political discrimination cases, in the following chapters I create a narrative that follows the collective experience captured in the data of working in an informal patronage system. A system that is “not blind,” that takes into account one’s professional and political qualifications or personal connections (and sometimes only one’s political qualifications), and that requires one to declare oneself politically in order to advance professionally; a system in which one’s work conditions change positively or negatively every four to eight years. Decades after landmark cases limiting patronage practices, such as

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46 This assumes a change in political administration every four years for the sake of simplicity, but a group can be “insiders” for years or even decades when there is no change in the administration, especially at the Municipal level. At the State level, it frequently alternates between the two major parties.

47 Some interviewees described the experience as a wheel, sometimes you are above, sometimes below (“una rueda, a veces arriba, a veces abajo,”) also as rising or descending.
Elrod v. Burns (1976) and Rutan v. Republican Party of Illinois, (1990), political discriminatory practices continue undeterred:

Despite the thirty years since Elrod, administrations in Puerto Rico have continued to take employment actions against public employees because of their political affiliations. With each change in administration—at both the commonwealth and municipal levels—the federal district courts in Puerto Rico are flooded with hundreds of political discrimination cases, many of which are appealed... The practice is so pervasive that jury awards in cases of political discrimination threaten to bankrupt local governments in Puerto Rico. And yet the culture of political discrimination continues.\textsuperscript{48}

Given the pervasiveness of the practices,\textsuperscript{49} courts have to deal with a formal merit system that is used, that is manipulated, to further the informal patronage system’s goals. How do they deal with an informal system so intertwined with the formal one? With an informal system that uses the merit system processes to protect and legitimize itself? With a formal merit system—with all of its sophistication—working to uphold the informal system.

This dissertation addresses the underlying informal power structures that shape the experience of patronage. The experience of patronage described in this dissertation, does not happen in a void. It happens within the context of a highly regulated civil service system, and the mainly informal, but highly organized structures of control that political parties have within state agencies. These political structures within state agencies, and their influence and varying degrees

\textsuperscript{48} Sánchez-López v. Fuentes-Pujols, 375 F.3d 121, 126 (1st Cir. 2004). In another case, “One thing remains clear—politics in this district has proven a dangerous business; the people of Puerto Rico, not the party leaders, are hurt most by what, under the current legal standards, can only amount to an endless cycle of unactionable patronage dismissals” (Hernandez Acevedo v. Aponte Roque, 684 F. Supp. 18, 21-22 (D.P.R. 1988)). In another, “The Court must mention that it currently has some 15 cases of this nature on its docket, with a total of almost 500 plaintiffs. It cannot be delaying its crowded docket...” (Lopez-Gonzalez v. Municipality of Comerio, 404 F3d 548, 550 (1st Cir. 2005)).

of control over personnel processes, allow political parties to draw both resources and manpower from state instrumentalities—as expressed by an interviewee, “…the parties have an army paid by the state” in the public bureaucracy.

4. Chapter Outline

This dissertation follows the patronage cycle that many public employees experience, as alternating and repetitive cycles—of being benefited or punished by the system—as political parties cycle in and out of power. The chapters each take a piece of the model, and the conclusion considers it as a whole.

Chapter 2: A System of Insiders and Outsiders: This chapter reviews the literature on political patronage and corruption, and discusses the development of the merit system in Puerto Rico and in the U.S. In this chapter I detail the dissertation’s methodology and return to the model of patronage as a system of insiders and outsiders introduced in this chapter, including a general overview of the informal patronage system in Puerto Rico—its structures, actors, and some of its tools. I also introduce some of the concepts that I will address throughout the dissertation chapters.

Chapter 3: Becoming an Insider: This chapter describes the initial experience/phase of the informal patronage system: how political affiliation is used as an informal qualification for entry into public employment. It describes how people enter into the system, and hiring within party lines is considered normal, “maybe unethical, but not illegal.” The informal patronage system rests on the ability to be able to distinguish between insiders and outsiders. This chapter suggests that there are multiple informal mechanisms for determining political affiliation, and that power over appointments in the career service is not nearly as straightforward as an agency’s

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50 Citizen.
organizational chart would suggest.

Chapter 4: From Insiders to Outsiders: Here, I describe the changes to employees’ work conditions, including the experience of political discrimination, when they go from insiders to outsiders after their party loses elections. This change often involves the worsening of employment conditions and is the phase during which political discrimination is most likely to be experienced. In this chapter, I discuss the experience of political discrimination as an individual experience and as a collective experience. Political discrimination not only resulted in loss of productivity, loss of income, and loss of emotional stability, but had enduring effects in the way that employees relate to one another and provides them with a rationale and justifications for politically discriminatory actions towards those identified as “others.” Employee perceptions of justice in this environment are often based on group-related and particularistic considerations.

Chapter 5: From Outsiders to Insiders: This chapter describes how the cycle continues as employees become again insiders when their party returns to power and suggests how the outsider experience reinforces the patronage system. By focusing on participants' individual and collective experience, specifically on the experience of the cycling back to an insider status after experiencing discrimination as an outsider, this chapter explores alternative mechanisms that support the perpetuation of the patronage system, as it relates to the process of crystallization of political identity and acculturation to and normalization of the organizational culture. This chapter will discuss political discriminatory practices against outsiders as a complement and as an alternative to the favoritism of job patronage.

Chapter 6: Conclusion: In the concluding chapter I illustrate the model and findings of my dissertation through the discussion of two recent government failures in Puerto Rico that were facilitated by the informal patronage system: (1) the administrative and political order of
erasing thousands of uninvestigated child abuse referrals prior to an electoral event, and (2) a grand-scale corruption case involving a powerful political fundraiser and multiple government agencies. Additionally, I discuss the implications of my findings for both theory and practice, and the limitations of my work.
CHAPTER 2. Patronage as a System of Insiders and Outsiders

In this dissertation I analyze both the preferential treatment awarded to insiders and the prejudicial treatment towards outsiders as distinct but inter-related practices. In contrast to much of the literature on patronage, which looks at the experiences and standpoint of *insiders*, or that narrowly focuses on the experience of political discrimination, I suggest patronage as a system that is differentially reinforced by the cumulative effect of outsider and insider experiences. In this dissertation I employ a mixed-method, qualitative strategy that includes in-depth interviews with public employees, limited participant observation, and the analysis of political discrimination cases. This dissertation contributes to understanding: how an informal patronage system works within a highly regulated, formally meritocratic civil service system; how it is experienced and understood by public bureaucrats; and how the patronage system affects the government bureaucracy, public policy, and social outcomes.

Section 1 of this chapter summarizes the literature on political patronage within corruption studies as well as in the public administration literature and argues that the way that patronage is commonly defined and conceptualized leads to an almost exclusive focus on the system’s *insiders*, while neglecting the role and experience of the *outsiders*. The literature review covers relevant literature on corruption and defines patronage as a form of political corruption that can be usefully conceptualized as an informal institution. Additionally, it presents an overview of the development of the civil service system in the U.S. and introduces the case of the Commonwealth of Puerto Rico and its relevance for patronage and corruption studies. In this section, I also consider the case of the Commonwealth of Puerto Rico against two of the most common theoretical approaches for explaining the persistence of patronage—historical institutionalism and the stages of democratization thesis—and argue that these do not sufficiently explain the case of Puerto Rico. The final section of the literature review covers the literature on
how patronage persists and argues that understanding how patronage functions is essential for understanding why patronage persists.

Section 2. details the dissertation’s methodology, while Section 3. discusses the conceptual framework for the study of patronage as a system of insiders and outsiders and the experience of patronage as a cycle. In this section I provide an overview of the infrastructure and tools of the informal system in place—that underlie, reinforce, and shape the experience of patronage.

Additionally, I introduce some of the key concepts that are addressed throughout the chapters.

1. Review of the Literature: The Outsiders—An Underexplored Experience of Patronage Systems

   a. Political Patronage

Patronage in personnel management refers to recruitment, retention or dismissal of employees on the basis of partisanship rather than qualifications or merit.\(^{51}\) It is generally offered in exchange for political support, in the form of votes or work on behalf of the party or candidate.\(^ {52}\) Patronage is considered a “...timeless strategy of political gain,”\(^ {53}\) that continues to affect modern societies and that is either at the core of political corruption or contributes to it.\(^ {54}\) Patronage is a feature of many democratic and non-democratic governments, given that its strategic use can help to acquire or maintain power in any type of regime, and that it “...provides politicians with enormous power over the governed.”\(^ {55}\) Additionally, within a political party, it serves as a means of discipline, direction, and cohesion.\(^ {56}\) Job patronage is considered a sub-category of


\(^{52}\) Ozturk, “Corruption, Job Patronage, and the Political Economy of Human Capital Investment.”

\(^{53}\) Ibid., 33.


\(^{55}\) Ozturk, "Corruption, Job Patronage, and the Political Economy of Human Capital Investment," 43.

clientelism, which is defined as a non-programmatic type of politics where benefits are offered in exchange for the recipients’ political favors (e.g. vote buying, turnout buying).\textsuperscript{57}

Patronage has been found to increase inefficiencies in government systems, such as decreasing the quality of the workforce,\textsuperscript{58} and to negatively affect societal trust, citizenship ties, and investments in human capital.\textsuperscript{59} Some of the conditions associated with patronage and with corruption generally are: high levels of inequality, poverty, and environments in which government institutions have lost legitimacy\textsuperscript{60} or have not achieved legitimacy. Additionally, job patronage is often at the core of political corruption and is considered a pre-condition for other forms of systemic corruption,\textsuperscript{61} with the potential for enormous social, political, and economic repercussions. For example, job patronage can facilitate the establishment of control over state agencies, which allows for the systematic exploitation of public resources:

Insofar as a party does not control state agencies it will hardly be in the position to develop large-scale clientelistic exchanges, to favor specific constituencies throughout the allocation of funds, or to make illegal use of public resources for private gains.\textsuperscript{62}

Because of its effects on society and on the individuals that experience the discriminatory aspects of a patronage system, in Puerto Rico it has been framed as an issue of human and civil rights and discussed as a form of political discrimination, or the prejudicial treatment of a category of people based on their political affiliation, preferences, or beliefs.\textsuperscript{63}

\textsuperscript{60} Ibid.
\textsuperscript{63} Cordero-Nieves, “El Discrimen Político en el Empleo Público”; El Estudio del Discrimen Político en el Empleo Público: Desafíos Iniciales”; Cordero-Nieves et al., El Discrimen Político en el Empleo Público; Puerto Rico Civil
This focus on political discrimination in the Puerto Rico literature, is a departure from most of the literature on patronage. Patronage as a form of political corruption—an “abuse of power for personal or party profit”\(^\text{64}\)— has been studied extensively, but it is almost always defined and described in terms of the beneficial relationships for *insiders*—their experience, their incentives, their networks.\(^\text{65}\) For example, Grindle describes the classical conceptualization of patronage systems as resembling “extended pyramids of contracts between superiors and multiple subordinates... Power in patronage appointments thus cascades downward, while loyalty flow upward, culminating with some ultimate arbiter of employment opportunities.”\(^\text{66}\) However, these definitions and conceptualization of job patronage and patronage systems often ignore the coercive aspects of these exchanges (towards the insiders), as well as the actions directed at outsiders that are also crucial aspects of patronage systems, and which might contribute to patronage systems’ intractability.

Other conceptualizations, more common in studies of clientelistic systems, incorporate the negative aspects within patron-client relationships, and focus on the exploitative nature of a

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\(64\) Key, “The Techniques of Political Graft in the United States,” 386.


\(66\) The patronage system as generally conceptualized is visually represented in Grindle, *Jobs for the Boys*, 19.
system that preys on and exploits the vulnerable; that punishes if one does not comply; and that sometimes coerces participation.67 These conceptualizations consider patronage and clientelism strategies of political favoritism, zero-sum interactions in which political criteria are the basis for rewarding citizens that are politically valuable or for punishing individuals that are not68; a quid-pro-quo that “often involves exploitation and domination” of those participating within the system.69 These conceptualizations focus on the vulnerability of the groups that are subject to patronage contracts and systems, and focus on the societal effects of the exclusion that are deemed necessary conditions for patronage to persist.

Patronage is considered difficult to uproot, “In societies where it flourishes, it builds a momentum of its own. Going far beyond the initial conditions that enabled its emergence, the process of patronage creates its own organic conditions of self-perpetuation.”70 At a micro-level, explanations of how patronage (and other forms of clientelism) are sustained and perpetuated are often described exclusively in terms of the insider. In these accounts, ties of loyalty and reciprocity,71 fear of punishment,72 or self-interest,73 binds individuals to the patronage contract, the dyadic relationships that are the “micro-foundations” of patronage.74 At a broader level, some of the conditions associated with patronage and with corruption generally are: high levels of inequality, poverty, and environments in which government institutions have lost legitimacy75 or

69 Ibid., 29.citing Kitschelt, 2000, p.849.
70 Ibid., 33.
71 For example, Grindle, Jobs for the Boys: Patronage and the State in Comparative Perspective.
72 Stokes et al., Brokers, Voters, and Clientelism: The Puzzle of Distributive Politics; Stokes, “Perverse Accountability.”
73 Oliveros, “A Working Machine.”
74 Grindle, “Constructing, Deconstructing, and Reconstructing Career Civil Service Systems in Latin America.”
75 Ozturk, “Corruption, Job Patronage, and the Political Economy of Human Capital Investment.”
have not achieved legitimacy. Widespread patronage is generally associated with the early phases of democratization, or with other periods that are characterized by social upheaval and change.\textsuperscript{76} Often, patronage is discussed as a practice characteristic of a developmental stage to be overcome or lessened as other forms of political influence become more prevalent.\textsuperscript{77}

Patronage is also a fundamental piece of public administration studies. In the U.S. public administration literature, the experience of the outsiders has been detailed in order to analyze the Constitutionality of the practices or to review the history of the court cases that led to the Supreme Court rulings that greatly curtailed patronage practices. The outsider experience has been used in this literature in a limited way: to promote reform or as part of the history of civil service reform in the U.S.

Public administration as a field of study in the United States was closely tied to the reform agenda that drove many of the changes that transformed the civil service from a patronage system into a merit-based civil service. The discussion of the politics-administration dichotomy and the establishment of a neutral, merit-based civil service were central themes in early public administration literature.\textsuperscript{78} Reformers aiming to eradicate patronage proposed to isolate administration from politics. The reformers maintained that there was a fundamental dichotomy between the systems and emphasized the ills of patronage to drive their agenda.\textsuperscript{79}


Reformers promoted a merit system, based on the principles of competitive examinations, political neutrality and relative tenure. Contrary to patronage, “in such a system, the official performs duties for the state or the service, not for the patron or the party. The rules of the game in this system are formal and objectified through rules and procedures.”

The public administration literature almost uniformly condemns patronage, and proposes civil service reform as an alternative, as the solution. The expectations associated with civil service reform are immense, although they remain unfulfilled in many places:

Reformers of all stripes promote civil service reform as a tonic for corruption, nepotism, favoritism, partisanship, spoils, incompetence, lack of professionalism, inequity, capture, particularism, mediocrity, malfeasance, and electoral fraud and violence. In contrast, career civil services are thought to bring professionalism, merit, neutrality, uniformity, rule-orientation, competence, autonomy, predictability, and continuity to government. Indeed, patronage in the public service has no friends—aside, of course, from the politicians who provide jobs for “their people” and those who are favored with these appointments.

Similar to the literature on corruption, there are ongoing debates regarding the beneficial or functional aspects of patronage. For example, Bearfield argues that studies of patronage in public administration and political science reflect the anti-patronage reformist language and that this bias has impeded its careful study. Bearfield identified four different styles of patronage based on their function: organizational patronage is used to create and strengthen organizations (e.g. political parties, political machines); democratic patronage works towards democratic or egalitarian goals (e.g. affirmative action in public employment); tactical patronage is used for achieving political or policy goals, for example, selection based on ideology to promote policy

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81 According to Bearfield, patronage and merit are not opposites, they simply shift the factor upon which decisions are made, or patron-client relations established: “...shifting the basis of kinship from political party, ethnicity, or race to educational attainment, university affiliation, examination proficiency, or any of the other designations used to determine merit or represent professionalism is not the same as eliminating or even imposing patronage. It is simply altering the common factor that links patron and client” (p.73).

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goals or strategic selection based on geography or some other attribute that helps overcome political divisions;\textsuperscript{84} and reform patronage, which is used to replace a prior patronage-based regime, with like-minded supporters of reform movement or by changing the criteria used to select employees (e.g. on merit or professional grounds).\textsuperscript{85} But, again, all these types of patronage are modeled based on the function it serves for system insiders. The role of the outsiders is implied rather than explicitly treated.

Likewise, Grindle\textsuperscript{86} provides a functional analysis of patronage in Latin America, and argues that patronage provides flexibility to systems, allowing for significant policy changes.\textsuperscript{87} Similarly, Auyero found that the clientelistic networks in Argentina were fulfilling functions that the state had abandoned.\textsuperscript{88} Nonetheless, both of these studies are based on the experiences and perspectives of system insiders. Again, the focus on the outsiders is minimal. Thus, the system is functional for those it serves and that benefit from it.

Grindle recognized that the “fatal weakness” of patronage systems is that “they are capricious, subject to the whims and ends of those who manage them.”\textsuperscript{89} Specificity is thus crucial in studying patronage systems,\textsuperscript{90} to identify the underlying logic and conditions that support it, for determining the purpose and function it serves as well as uncovering the links it has to other social phenomena, such as policy implications. For this purpose, I am adopting an

\textsuperscript{84} Ibid., 70.
\textsuperscript{85} Ibid., 69–72. A one-sided view of patronage is argued to ignore its functional aspects, for example, the important role that it had in democratizing the bureaucracy in the U.S., for solving some of the problems that arose from the Constitutional reality of the separation of powers, and for bridging the distance between the citizenry and the government (Ingraham, \textit{The Foundation of Merit}; Van Riper, \textit{History of the United States Civil Service}.) In Puerto Rico patronage had a democratizing effect as the financing base of the political parties changed from the “hacendado” powerful class to the public employees during the 1940’s (Cordero-Nieves, “El Discrimen Político en el Empleo Público.”).
\textsuperscript{86} Grindle, “Constructing, Deconstructing, and Reconstructing Career Civil Service Systems in Latin America.”
\textsuperscript{87} Ibid., 22–23.
\textsuperscript{88} Auyero, “The Logic of Clientelism in Argentina,” 60.
\textsuperscript{89} Ibid., 23.
insider-outsider framework to bring the role of the outsiders into the analysis of how a patronage system functions and is maintained.

b. Patronage and Corruption

Although scholars propose different relationships between corruption and patronage, a system of informal patronage within a formally meritocratic system, is most fruitfully understood as a form of political corruption. Political corruption is commonly defined as “behavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique), pecuniary or status gains.”

It has also been defined as “the abuse of power for personal or party profit,” which is the definition I adopt for this study. Some scholars have explicitly differentiated patronage from corruption and have based this differentiation on the type of gain that is sought: “... politicians get involved in corrupt practices to amass material benefits while they engage in job patronage to maximize political support.” Studies that have made a distinction between the terms have found job patronage to be positively correlated with corruption and with basically the same macro-level conditions (e.g. inequality, poverty). Other studies have focused on patronage without addressing corruption. As such, there are many overlapping themes and debates in the corruption and the political patronage literature. In this dissertation, I treat political patronage as a type of political corruption, in which official power is abused for personal or party profit. I do not subscribe to Ozturk’s definitional parameters because the type of gain sought is not easily discernible, and one type of gain often leads to another (i.e. political support might lead to an elective position or to control over governmental

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resources which might then lead to material benefits).

Corruption is generally held to be harmful for economic development and growth,\textsuperscript{95} but the severity of its effects are context- and country-specific.\textsuperscript{96} For example, Ozturk argues that welfare losses due to corruption are less severe in decentralized environments like Latin America: “Although many actors are engaging in various corrupt exchanges, each exchange has a negligible impact on the overall welfare. By contrast, in Africa, a single corrupt deal between a President and a business tycoon can wipe out several percentages of a country’s entire budget.”\textsuperscript{97} Studies that have found corruption to be beneficial (e.g. “grease the wheels”), have tended to do so because of the use of a short-term time-frame in which the damaging long-term effects of the practices are not yet apparent.\textsuperscript{98}

There are several factors that make the study of corruption (and of patronage) difficult, among these: definitional issues given that these are historically-contingent constructs that have different meanings across time and place;\textsuperscript{99} inherent difficulties in studying actions that people actively hide, which leads to problems with measurement and unreliability of the data on corruption generally.\textsuperscript{100} Additionally, cross-cultural studies of corruption have proved difficult, given differences in countries’ laws and in levels of general acceptance towards certain


\textsuperscript{97} “Corruption, Job Patronage, and the Political Economy of Human Capital Investment,” 31.

\textsuperscript{98} Rose-Ackerman, \textit{Corruption and Government}.


\textsuperscript{100} Rose-Ackerman, \textit{Corruption and Government}; Svensson, “Eight Questions about Corruption.”
behaviors. Furthermore, researchers tend to limit corruption to types of bribery and to superimpose the standards of advanced democracies to countries with dramatically different socio-political conditions. Consequently, the literature on corruption has suffered from a western bias, whereby practices in other countries are decontextualized.

In order to overcome cross-cultural difficulties in the study of corruption, Scott conceptualized corruption as an informal political system that is determined by the patterns of access and exclusion institutionalized in the formal rules of the government. It can have marginal effects in political settings in which it is an exception, or decisive effects where corruption is pervasive, resulting in distortions to the formal governmental policies. Understanding the patterns of access and exclusion is important for understanding the functional value that types of corruption might be serving. For example, in some instances corruption can serve a stabilizing function by providing access or benefits to groups that would otherwise be marginalized, and in this sense, it can be considered an alternative to violence.

c. Patronage as an Informal Institution

Although the literature connects job patronage to other types of political corruption, often, when

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103 Caiden and Caiden, “Administrative Corruption”; Theobald, *Corruption, Development and Underdevelopment*.
105 Scott, *Comparative Political Corruption*.
it comes to corruption, “we don’t understand clearly, empirically, what we are talking about.”

In addition to understanding how specific forms of corruption work, there is an overall need for a more detailed understanding of the effects of the different types of corruption as well as the effects of the same type of corruption (e.g. patronage, bribery, nepotism) that respond to different informal systems. As argued by Ríos and Espejel, a more precise understanding of the effects of different types of corruption is needed. The authors show how corruption that allows for informal market opportunities for the general population decreases inequality by increasing the share of income for the bottom 20%; while corruption that privileges firms increases inequality (increasing the share of the top 10%).

Similarly, Strach, Sullivan and Pérez-Chiqués, analyze the effect of different types of corruption and informal systems in service provision and state-building, more generally—showing how corruption is used as a tool of government, and its different effects (who benefits / effectiveness of service provision) depending on the underlying informal systems.

Corruption(s) do not happen in a vacuum, and they constitute, as argued by Scott, political institutions that respond to different formal and informal understandings. As James C. Scott explains:

If the study of corruption teaches us anything at all, it teaches us not to take a political system or a particular regime at its face value. Corruption, after all, may be seen as an informal political system. Whereas party manifestos, general legislation, and policy declarations are the formal facade of the political structure, corruption stands in sharp contrast to these features as an informal political system in its own right. … For most nations at some point in their history, and for many nations today, however, the surreptitious politics of this arena is so decisive that an analysis which ignored it would

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110 “Corruption Type and Income Inequality in Latin America.”
be not simply inaccurate but completely misleading. … These are perhaps dramatic examples but they alert us to the fact that corruption is frequently an integral part of the political system—a part which we ignore at great peril.112

Approaching political corruption as an informal political system allows for the examination of the mutual expectations and understandings that define, constitute or complement the actual rules of the game; rules that are “created, communicated, and enforced outside of officially sanctioned channels.”113 The power distribution of any such system has to be carefully analyzed: who has access to and influence over political processes and governmental benefits, who is excluded, who benefits from the informal system, through which channels is power accessed? Whose interests does the informal institution reflect?114 It is necessary to integrate the formal and the informal into the same framework to understand a system in its entirety.115 In order to understand patronage or any particularistic strategy, there has to be an understanding of the real as opposed to the formally stated goals of the organization,116 of the real as opposed to the official way that power is distributed,117 and of whom is it beneficial or functional for.

To restate, this research approaches patronage systems as a form of political corruption and defines political corruption as an informal political system whereby official power is systematically abused for party or personal profit.118

\[d. \textit{Why Puerto Rico?}\]

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114 Scott, Comparative Political Corruption.
117 Scott, Comparative Political Corruption.
118 Key, “The Techniques of Political Graft in the United States”; Scott, Comparative Political Corruption.
Puerto Rico is the best-case scenario for reform, adopting US federal merit-based system in 1907 and continually reinforcing civil service laws in federal court cases. At the same time, however, patronage and politically discriminatory practices, as this research shows, has become systemic and normalized. If it has been more than 100 years since the implementation of the civil service system, and patronage still is a normal part of governing in Puerto Rico: what can we learn about what drives patronage and what inhibits reform?

Additionally, Puerto Rico’s shared colonial history with Latin American countries, as well as the imposition of the U.S.’ legal and political framework since 1898, which distinguishes it from the rest of Latin America— makes the case of Puerto Rico relevant to the U.S. experience as well as to countries with similar historical backgrounds. The case of Puerto Rico is relevant for increasing understanding of efforts to transplant the merit system as well as other programs or systems to countries with different historical trajectories or political cultures.

1. The Case of Puerto Rico: Patronage within a Highly Regulated Merit System

The civil service system in Puerto Rico looks like a functioning merit system because, formally, all the structures, processes, and tools of a merit system are in place. This appearance has led some observers to conclude that Puerto Rico has one of the only functioning merit systems in the Caribbean. Nonetheless, informally, Puerto Rico maintains a patronage system where political or personal considerations are a major route to appointment for a significant portion of

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nonelected positions.\textsuperscript{121} In Puerto Rico, the informal patronage system works through the merit system’s formal structures and sometimes parallel to it.\textsuperscript{122}

Puerto Rico is historically identified with Latin America but has operated within a U.S. legal and political framework since 1898. Although under Spanish rule there was no civil service system, nine years after U.S. occupation, Puerto Rico adopted its first civil service law.\textsuperscript{123} The 1907 law as well as all subsequent civil-service laws\textsuperscript{124}, and the Commonwealth’s 1952 Constitution prohibited political discrimination.\textsuperscript{125} Puerto Rico is also subject to the same federal laws and regulations limiting patronage and political discrimination as other States.\textsuperscript{126} The development of the merit-based civil service in the U.S. was a gradual, lengthy and profoundly political process.\textsuperscript{127} Initially a valuable instrument for democratizing the U.S. civil service, in its later stages this system was characterized by excesses of power, was perceived as inefficient and costly, and was ultimately delegitimized.\textsuperscript{128} The U.S. Supreme Court declared unconstitutional practices such as hiring, firing, promoting, demoting or transferring low-level employees on a

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\textsuperscript{121} Grindle, \textit{Jobs for the Boys: Patronage and the State in Comparative Perspective}, 18.
\textsuperscript{122} Colón-González, “El Discrimen Político en el Empleo Público Mediante la Manipulación de los Sistemas de Mérito.”
\textsuperscript{124} There have been four other main laws pertaining to personnel management: P.R. Act No. 88 of May 11, 1931 (repealed 1907 law, established a Civil Service Commission); P.R. Act No. 345 of May 12, 1947 (created central personnel agency and board of personnel); P.R. Act No. 5 of October 14, 1975 (established a personnel board of appeals separate from the personnel agency; identified merit explicitly as the governing principle); and P.R. Act No. 184 of August 3, 2004, as amended, Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico (for the decentralization of personnel management, and reconciling the merit-based personnel system with collective bargaining) (Colón-González, “El Discrimen Político en el Empleo Público Mediante la Manipulación de los Sistemas de Mérito”).
\textsuperscript{125} Alba Caballero-Fuentes, “Discrimen Político en El Sistema de Recursos Humanos del Servicio Público de Puerto Rico” (2012), \url{http://shrmpr.shrm.org}; Cordero-Nieves et al., \textit{El Discrimen Político en el Empleo Público}.
\textsuperscript{126} In the 1990s, Anne E. Freedman’s, \textit{Patronage: An American Tradition} (Chicago, IL: Nelson-Hall Publishers, 1994) documented sizable patronage operations in the City of Chicago, the State of Illinois, and Nassau County, New York.
\textsuperscript{127} Grindle, “Constructing, Deconstructing, and Reconstructing Career Civil Service Systems in Latin America”; Ingraham, \textit{The Foundation of Merit}; Van Riper, \textit{History of the United States Civil Service}.
\textsuperscript{128} Ingraham, \textit{The Foundation of Merit}; Van Riper, \textit{History of the United States Civil Service}. 

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political basis. Changes from the spoils system to a merit-based system in the U.S. were supported by the enactment of legislation such as the Pendleton Act of 1883, the Hatch Acts of 1939 and 1940, and by Supreme Court rulings such as Elrod v Burns (1976) and Rutan v Republican Party of Illinois (1990). Patronage systems in personnel management in the United States have been greatly reduced and replaced by the merit system, but how do they persist in Puerto Rico, which is subject to the same federal laws and regulations?

The Puerto Rico Civil Service Law of 1907 was modeled after the U.S. Pendleton Act of 1883. It established a local Civil Service Board, which included individuals that had direct experience with the implementation of the civil service in U.S. states. It created a classified

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130 This Act limits the political activities of executive branch federal employees and of state and local government employees whose salary is primarily funded by federal funds.

131 In the 1990s, Freedman, *Patronage*, documented sizable patronage operations in the City of Chicago, the State of Illinois, and Nassau County, New York; but although these are thought to have been weakened considerably, patronage still subsists in highly structured civil service systems.

132 In the U.S. “…the political consensus that supported the regulatory, neutral-competence norms driving public sector merit systems for half a century in the United States has mostly evaporated— replaced by an emphasis on management, results, responsiveness, and accountability” (Nigro, Nigro, and Kellough, “Public Employees-- Rights and Responsibilities,” xi.). In a sense, extremes in either the merit or the patronage direction have resulted in bureaucracies that are perceived as non-responsive, ineffective, and isolated from the citizens (Ingraham, 1995). Currently, the trend among U.S. states of turning to more flexible at-will employment systems (Stephen E. Condrey and R. Paul Battaglio, “A Return to Spoils? Revisiting Radical Civil Service Reform in the United States,” *Public Administration Review* 67, no. 3 (2007): 425–436; M.K. Feeney and G. Kingsley, “The Rebirth of Patronage: Have We Come Full Circle?,” *Public Integrity* 10, no. 2 (2008): 165–76; J. Edward Kellough and Lloyd G. Nigro, “Dramatic Reform in the Public Service: At-Will Employment and the Creation of a New Public Workforce,” *Journal of Public Administration Research and Theory* 16, no. 3 (2005): 447–66.), coupled with the privatization and contracting out of government services Nicole P. Marwell, “Privatizing the Welfare State: Nonprofit Community-Based Organizations as Political Actors,” *American Sociological Review* 69, no. 2 (2004): 265–91; Martin Tolchin and Susan J. Tolchin, *Pinstripe Patronage: Political Favoritism from the Clubhouse to the White House and Beyond* (Boulder, CO: Paradigm Publishers, 2011), have raised concerns that the personnel system and government services will be once again unduly subjected to political abuse and patronage. In Puerto Rico, even though there has been no curtailing of the civil service system, there is widespread manipulation of the merit system’s rules and procedures in order to secure patronage objectives (Colón-González, “El Discrimen Político en el Empleo Público Mediante la Manipulación de los Sistemas de Mérito”; Cordero-Nieves et al., *El Discrimen Político en el Empleo Público*).


134 Colón-González, “El Discrimen Político en el Empleo Público Mediante la Manipulación de los Sistemas de Mérito.”
system to be regulated by the merit system and an unclassified system for elective positions and political appointments made by the President of the U.S., the Governor of Puerto Rico, the Legislature and Mayors. The 1907 law expressly addressed political discrimination, and established penalties, including imprisonment for politically discriminatory actions in personnel management. It prohibited eliciting a person’s political affiliation through questions or other means (e.g. inquiring of others) for entrance into the service or for promotion purposes (Section 13); requiring political fees or political services from public employees (Section 14); the use of official authority to coerce political actions or influence elections (Section 15); and the threat or use of adverse personnel actions against employees that do not make political contributions (Section 16).

Subsequent laws passed in the 1930s and 1940s placed Puerto Rico’s civil service laws as among the most advanced in the world. Nonetheless, during the first four decades of the

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135 Puerto Rico Civil Service Law of 1907 (March 14th).
136 Section 13. That no question in any form or application or in any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations of any applicant, nor shall any inquiry be made concerning such opinions of affiliations. No record shall be made and no consideration shall be given to any information furnished in any form or manner relative to such political or religious opinions or affiliations of any persons examined or to be examined for entrance into the service or for promotion of officers or employees already in the service.
Section 14. That no person in the civil service of Porto Rico shall be under obligations to contribute to a political fund or to render a political service, or to be removed or otherwise prejudiced for refusing to do so. Any person soliciting political contributions from public officers or employees shall be subject to a penalty of not exceeding five hundred dollars or to imprisonment not exceeding six months, or both.
Section 15. That no person in the civil service of Porto Rico shall use his official authority or official influence to coerce the political action of any other person or body, or to influence elections or control the results thereof.
Section 16. That no officer or employee in the civil service of Porto Rico shall discharge, or promote, or degrade, or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding, or neglecting to make any contribution of money or other valuable thing for any political purpose whatever.
Section 17. That the violation by any person in the civil service of Porto Rico of any of the provisions of this Act or of the rules made thereunder shall be considered good cause for the removal of such person from the service (Puerto Rico Civil Service Law of 1907 (March 14th), 181-182).
twenty-first century, the merit system existed almost exclusively in written law.¹³⁸ The implementation was at best partial, with only 23-32 percent of the workforce in the classified service in the 1940s.¹³⁹ The majority of the workforce remained outside of the classified service, either as unclassified or transitory employees, to be used for patronage.¹⁴⁰ Puerto Rico did not have the necessary institutional infrastructure to implement the laws’ requirements for a merit system, which included: centralized direction, position analysis and classification, and dispositions for recruitment, testing, and selection, among others.¹⁴¹ Additionally, there was lack of political will for (and outright hostility towards) the implementation of these laws, which resulted in the continual underfunding of the Civil Service Board and in arbitrary reductions of its budget and its members’ salaries.¹⁴² During this time, the chairman of the PR Civil Service Commission needed a bodyguard and a gun for his protection!¹⁴³ Local political parties and the local legislature continually thwarted the efforts to institute a merit system led by U.S. appointed governors, the “…defeat of the merit principle was an outright objective of the parties;” leaving the 1907 and 1931 laws virtually inoperative.¹⁴⁴ Patronage was a major source of the institutional and internal strength of the political parties; providing people that would work for the parties for the promise of a job, votes, and a source of ongoing income for the party—public employees had to contribute a percentage of their salaries to the political party.¹⁴⁵ It was a centralized

¹⁴¹ Colón-González, 1; Oficina del Gobernador, “Informe del Comité del Gobernador para el Estudio de los Derechos Civiles en Puerto Rico.”
¹⁴³ Goodsell, Administration of a Revolution, 112.
¹⁴⁴ Ibid., 92.
¹⁴⁵ Ibid., 96.
patronage system that operated in a sophisticated and orderly manner, in a context of political
stability:

With thousands of jobs at its disposal, the majority political party became, in effect, a
giant public employment agency. Operating in a surprisingly sophisticated manner, it
handled party endorsements routinely in the processing of employment applications, and
a geographic rotational system was developed whereby electoral districts were given jobs
in orderly succession, one at a time.\textsuperscript{146}

Breakthroughs in the implementation of the merit system provisions during the mid-1940s,
were attributed to the firm hold and dominance that the Popular Democratic party had
achieved—over the legislature and over the bureaucracy, partly through patronage appointments
(12,000 temporary or unclassified employees).\textsuperscript{147} It was only when implementing merit was no
longer a threat to the party in power, that advances in its implementation were achieved.\textsuperscript{148} In
1962, the National Civil Service League recognized the advances made in Puerto Rico, stating,
“…without reservation that the Puerto Rico personnel system is one of the best programs in
North America. In terms of standards of merit and substantive results produced in government
programs. Puerto Rico is well ahead of most other jurisdictions.”\textsuperscript{149} Nonetheless, these laws had
been passed at the convenience of the local political leaders of the time, and only after they had
secured a hold over the bureaucracy through job patronage.\textsuperscript{150} The merit system in Puerto Rico
never rose out of a genuine attempt at reform, but rather was used since its inception to secure
power for the political party in power. As Goodsell forewarned,

\begin{quote}
...the real test of this merit system will come at some future time, when a change of party or
some other major political shift occurs in Puerto Rico. Once more a political need for
patronage may conflict with the administrative need for competence, and civil service
administration will be under a strain it does not suffer from today. But at that time, unlike the
\end{quote}

\begin{footnotes}
\footnote{\textsuperscript{146} Ibid., 96 citing Honey 444-445, interview with Roberto Sánchez Vilella, April 26, 1963.}
\footnote{\textsuperscript{147} Ibid., 104.}
\footnote{\textsuperscript{148} “Perhaps Muñoz found himself in positions similar to his father in 1907 when civil service law could be enacted
a few years after the new Union party had come to power but not earlier” (Goodsell, 105.)}
\footnote{\textsuperscript{149} Ibid., 114 citing James R. Watson, “The Contribution of Personnel Management to Puerto Rican Progress,” Good
Government, 79, no. 43 (1962).}
\footnote{\textsuperscript{150} Goodsell, \textit{Administration of a Revolution}.}
\end{footnotes}
early nineteen-forties, there will be in existence a strong merit tradition, which presumably will act as a counterbalance to political demands.\textsuperscript{151}

And the time came. And the merit tradition was not strong enough to withstand the major political shifts that occurred in Puerto Rico starting in the late 1960s, when the two major parties, the pro-statehood New Progressive Party, and the pro-commonwealth Popular Democratic Party, started alternating power every 4-8 years. The subsequent period saw the weakening of the merit system’s provisions and an increased and marked politicization of the civil service in Puerto Rico.\textsuperscript{152}

The victory of the pro-statehood party (PNP) in 1968 signaled the end of the 20-year hegemony of the pro-commonwealth party (PPD), which was followed by a marked increase in the politicization of the public service in Puerto Rico during the 1970s as the political parties vied for control over government jobs, in the midst of the first economic recession in the Commonwealth.\textsuperscript{153} In these decades, the weakening of different provisions of the merit system was achieved through various means, such as: amending laws; establishing special projects not subject to the merit system; appointing transitory employees for indefinite periods of time and then moving them to the classified service through special legislation; use of untrained personnel for administering entry exams; and blatant disregard for the laws.\textsuperscript{154}

\textsuperscript{151} Ibid., 114.
\textsuperscript{153} Colón-González, “El Discrimen Político en el Empleo Público Mediante la Manipulación de los Sistemas de Mérito.”
\textsuperscript{154} Colón-González; Cordero-Nieves et al., El Discrimen Político en el Empleo Público; Cordero-Nieves, “El estudio del discrimen político en el empleo público: desafíos iniciales.”; Segarra-Alméstica, “Factores que Inciden en El Mal Uso de los Recursos del Gobierno y la Corrupción en Puerto Rico”; Vázquez-Irizarry, “Aspectos Legales del Discrimen Político en Puerto Rico.”
Simultaneously, the federal laws and regulations limiting patronage and political discrimination were steadily strengthened, declaring unconstitutional practices such as hiring, firing, promoting, demoting or transferring low-level employees on a political basis. Supreme Court rulings such as *Elrod v Burns* (1976) and *Rutan v Republican Party of Illinois* (1990), resulted in clear mandates regarding the prohibition of patronage practices for low-level public employees. In *Elrod v. Burns*, the Court determined that firing low-level public employees on a political basis was unconstitutional because it violated the First and Fourteenth Amendments. In the *Rutan v Republican Party* ruling, this prohibition was extended to promotions, transfers, recalls and hiring decisions. Supreme Court decisions since the 1970s have further limited public employers’ power of removal by establishing that public employees may have property and liberty interests in their jobs.\(^\text{155}\) Public employees’ property and liberty rights to their jobs are protected by the due process clause in the Fifth and Fourteenth Amendments to the Constitution.\(^\text{156}\) In a merit system successful completion of a probationary period generally leads to permanent employment. This expectation results in public employees having property interest in their jobs and entitles them to procedural due process in the case of removal.\(^\text{157}\) Liberty interest considerations arise when the removal of a public employee might hinder his/her future possibilities for employment because of reputational damages.\(^\text{158}\)

\(^{155}\) Nigro, Nigro, and Kellough, “Public Employees-- Rights and Responsibilities.” Additionally, public employees’ property and liberty rights to their jobs are protected by the due process clause in the Fifth and Fourteenth Amendments to the Constitution. In a merit system successful completion of a probationary period generally leads to permanent employment. This expectation results in public employees having property interest in their jobs, and entitles them to procedural due process in the case of removal. Liberty interest considerations arise when the removal of a public employee might hinder his/her future possibilities for employment because of reputational damages (Ibid.).

\(^{156}\) Nigro, Nigro, and Kellough, “Public Employees.”

\(^{157}\) Ibid.

\(^{158}\) Ibid.
Notwithstanding the legal and institutional infrastructure that has been developed to prevent political discrimination and uphold merit in personnel management, political discriminatory practices have been an ongoing, persistent problem in Puerto Rican public administration since the early 1900s. In Puerto Rico, these practices have continued unabated throughout time, resulting in the systematic manipulation of the merit civil service system for patronage and politically discriminatory purposes.

Over the past twenty years the State has paid over $200 million dollars in political discrimination cases. This figure is considered an underestimate given that it does not include cases that are settled—information which is not publicly available. As Vázquez-Irizarry concludes, “then, not only do they (defendants) discriminate and don’t pay, but that everything occurs under a veil of secrecy.” Moreover, most political discrimination cases never make it to court given the expenses and energy involved in taking forth a legal action against the state.

The Law of Claims and Suits Against the State (Puerto Rico Law 9 of 1975) established that the Puerto Rico Department of Justice is responsible for providing legal representation to state


160 Ibid.

161 Ibid. From 2003-2009, the total in damages paid by the government of Puerto Rico was $92,016,353, of this, 78% was paid by Municipalities, 13% by public corporations, 8.9% by state agencies and departments and 0.4% by other government entities. These amounts do not include court settlements (Cordero-Nieves et al., El Discrimen Político en el Empleo Público, 248.)

162 Cordero-Nieves et al., El Discrimen Político en el Empleo Público.


164 Cordero-Nieves et al., El Discrimen Político en el Empleo Público; Puerto Rico Civil Rights Commission, "Informe sobre Discrimen Político en el Empleo Público en Puerto Rico"; Vázquez-Irizarry, "Aspectos Legales del Discrimen Político en Puerto Rico: Cinco Propuestas que Apuestan por la Transparencia.”
employees accused of political discrimination or other civil rights infringements, and the Government of Puerto Rico pays any damages that are determined as well as lawyer fees.\(^{165}\) Law 9 is thought to encourage impunity and render ineffective the existing protections against politically discriminatory actions.\(^{166}\) Municipalities are not covered under Law 9, and therefore settlement payments must be paid from local government resources. Although there is a cap to the amounts that can be claimed in the Commonwealth’s courts, there is no such cap when cases are taken to federal court, and the settlement costs can reach millions.\(^{167}\) Due to the high cost of some settlements, some municipalities finance settlements through borrowing facilitated by the Government Development Bank for Puerto Rico.\(^{168}\) Borrowing to cover the expenses of political discrimination cases elevates the costs of the settlements because of interests and affects the Municipal budgets.\(^{169}\)\(^{170}\) The repercussions of these practices in an economy as fragile as Puerto

\(^{165}\) Cordero-Nieves, "El Discrimen Político en el Empleo Público"; “El Estudio del Discrimen Político en el Empleo Público: Desafíos Iniciales”; Cordero-Nieves et al., El Discrimen Político en el Empleo Público; Vázquez-Irizarry, "Aspectos Legales del Discrimen Político en Puerto Rico: Cinco Propuestas que Apuestan por la Transparencia"; Oficina del Contralor de Puerto Rico, "Estudio sobre los Despidos, las Acciones Disciplinarias u Otras Transacciones de Personal por Motivos Político-Partidistas contra Funcionarios y Empleados de los Departamentos y de las Agencias de la Rama Ejecutiva. 1 de enero al 31 de diciembre de 2009."\(^{166}\) Cordero-Nieves et al., El Discrimen Político en el Empleo Público; Vázquez-Irizarry, "Aspectos Legales del Discrimen Político en Puerto Rico.”\(^{167}\) Vázquez-Irizarry, "Aspectos Legales del Discrimen Político en Puerto Rico.”\(^{168}\) Ibid.\(^{169}\) Comisión de Gobierno, 2006, p.24.\(^{170}\) As an example of the hardship that these cases cause for municipalities and their residents, in 1999 eighty-eight municipal employees sued the mayor of the Municipality of Adjuntas—a small municipality with less than 20,000 residents—for political discrimination. The plaintiffs alleged politically-motivated “...loss of job function, relocation to remote or inferior offices, and restricted access to bathroom breaks and facilities. These plaintiffs claim that the miserable working conditions created by their supervisors amounted to a constitutional violation” (Acevedo-García, et. al v. Vera-Monroig, et. al, No. 204 F3d 1 (1st Cir 2000), Appellants No 99-1137 (United States Court of Appeals for the First Circuit February 17, 2000)). The repercussions of these practices in an economy such as Puerto Rico’s cannot be understated. In this case, the Municipality was facing a $7 million-dollar penalty when the municipal budget was $8.4 million! (“Adjuntas advierte un caos,” NotiCel, January 8, 2011, \url{http://www.noticel.com}). The Municipality had been unable to pay the settlement and a federal judge ordered an embargo that would have resulted in the Municipality’s bankruptcy. An agreement was eventually reached, but had it not been, the Municipality would have had to close all public facilities and discontinue services, which included garbage collection, public lighting, and the municipal police, among others. Another recent example, the Municipality of Juana Díaz—a medium-sized municipality with approximately 50,000 residents—had to borrow over $1 million dollars to pay a political discrimination settlement from 64 municipal employees that alleged political discrimination and persecution (“Municipio hace millonario préstamo para pagar demanda por discrimen político según el presidente del PNP en ese pueblo,” El Vocero, June 19, 2014, \url{http://elvocero.com}).
Rico’s cannot be understated. The courts repeatedly decry the prevalence of these practices, which they call a “vicious circle,” alluding to their “irrationality” and “fatal and alarming” consequences:

This circuit leads the nation as one of the most prolific generators of political discrimination cases; in this area of litigation, the District of Puerto Rico has the dubious distinction of being the most fecund district in the circuit. See Morales–Santiago v. Hernández–Pérez, 488 F.3d 465, 466 (1st Cir.2007) (“[I]n Puerto Rico, a change between the Popular Democratic Party (PDP) and the New Progressive Party (NPP) [gives rise to] overly zealous political operatives of the prevailing party terminat[ing], demot[ing], or reduc[ing] the salaries of employees affiliated with the outgoing opposition party.”).

By focusing on the experience of public bureaucrats, this dissertation contributes to understanding how an informal patronage system—a type of systemic public corruption—works within a formally merit-based civil service system. The next section discusses two of the most often used theoretical approaches for explaining the persistence of patronage and discusses their limits by focusing on the case of Puerto Rico.

\[e. \text{Limitations of Asking “Why” Patronage Persists}\]

Existing literature has mainly focused on why patronage persists, but two of the main approaches for explaining the persistence of patronage do not explain well the case of Puerto Rico. The “stages of democratization” thesis cannot account for the persistence of patronage in Puerto Rico, and historical institutionalism, although useful at a macro-level of analysis, is not useful for understanding how patronage functions. More broadly, in order to understand the persistence of patronage in a specific environment, we first have to understand how patronage functions.

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171 Puerto Rico continues to exhibit persistently high levels of poverty: 45.5% of the population under the federal poverty line in 2015 (U.S. Census, 2015 Puerto Rico Community Survey); higher income inequality than any state in the U.S. (U.S. Census, 2016, “Household Income: 2015,” American Community Survey Briefs), and an inflated public sector, which constitutes 20% of employment (around 4% for most U.S. States), all of which are macro-level factors found to be correlated with patronage and corruption (Ozturk, “Corruption, Job Patronage, and the Political Economy of Human Capital Investment.”)


This includes examining the behaviors of organizational actors and the underlying shared values and assumptions that underlie these patterns of behaviors and that set the formal and informal rules that permeate and order the environment; that sustain function and drive reproduction.

i. Stages of Democratization

One explanation for patronage is that it is characteristic of an early stage of democratic development, and that it tends to subside as alternative means of political influence and exchange become available. Patronage practices in Puerto Rico and other Latin American countries appear to be a continuity in practices using new instruments rather than a stage in a developmental trajectory toward democratic governance. The stages of democratization thesis is explicitly or implicitly stated in many patronage and corruption studies, offers ideal stages that upon examination are infinitely more complex, overlap to different degrees, and cannot adequately explain numerous empirical cases\textsuperscript{174}, including the case of Puerto Rico, where a civil service system has been in place for more than 100 years, and a considerable time since democratization has gone by.

In the literature, widespread patronage is considered a condition related to the early phases of democratization or to other periods of social upheaval and change, such as regime changes, changes in the economic order or in the patterns of access and exclusion to governmental influence and services, or to when there is no rule of law.\textsuperscript{175} It is discussed as a practice that can


be overcome or tempered once the conditions that gave rise to it change and other methods of political influence or exchange become available or more prevalent.176

Similarly, based on his case studies in Latin America,177 Klingner argued that patronage in public personnel management is one of several stages in a country’s trajectory toward democratic government.178 Klingner developed a three-stage model of public personnel management, which he based on the U.S. experience. The dominant system in the first stage is patronage, in the second stage the dominant system is civil service, and in the third stage patronage (in the form of political appointments), civil service and collective bargaining co-exist as competing and self-correcting systems. Patron-client relations are considered endemic to Latin America’s political life.179 Consistent with the literature that links these practices to the early stages of democratization, patronage and clientelism became more entrenched in the region after the transition to democracy in the 1980s.180 Most Latin American countries passed their first civil service laws at least 50 years after Puerto Rico, some as late as the 1980s and 1990s. In many, there is a disconnect between the formal and the informal system of personnel management, or the distance between de jure and de facto practices.181 Grindle details the informal practices that result in the institutionalization of patronage and how the system is built upon dyadic exchange relationships, the “micro-foundations of patronage.”182 There is wide variation among the

177 Honduras, Panama and Costa Rica.
181 Grindle, “Constructing, Deconstructing, and Reconstructing Career Civil Service Systems in Latin America.”
countries. In some like Chile, Costa Rica, and Brazil, technical criteria for the management of personnel predominate.\textsuperscript{183} Other countries, like Mexico, have systems that include both merit and patronage in the management of public employees. Similar to the U.S. experience, profoundly political reform and anti-reform struggles have shaped Latin American countries’ civil service systems.\textsuperscript{184} Even though haltingly, most of these countries are moving in the direction of establishing a more professional public personnel system.\textsuperscript{185} Nonetheless, projecting from the U.S. experience might be an inadequate point of departure given the different historical traditions of the countries. This progression in stages is also echoed in much of the corruption literature, which seems to equate modernization and democratization processes with the move from traditional, particularistic systems to universalist ones.\textsuperscript{186}

The stages of democratization thesis is sometimes argued more subtly, for example some authors have differentiated between patronage in less developed countries and politicization in industrialized democracies, which “… implies attempts to control policy and implementation, rather than just supply jobs to party members of a family or clique.”\textsuperscript{187} These authors argue that the type of patronage in advanced democracies is qualitatively different from that in less developed countries, and that open types of politicization, such as the political appointees in the upper echelons of the U.S. bureaucracy (formal and legal form of patronage), are less harmful than other hidden forms of politicization, and might have important positive features for public service, such as keeping the bureaucracy from becoming too powerful.

\textsuperscript{183} Grindle, “Constructing, Deconstructing, and Reconstructing Career Civil Service Systems in Latin America.”
\textsuperscript{184} Grindle, \textit{Jobs for the Boys: Patronage and the State in Comparative Perspective}.
\textsuperscript{185} Grindle, “Constructing, Deconstructing, and Reconstructing Career Civil Service Systems in Latin America.”
\textsuperscript{186} For example, Huntington, “Modernization and Corruption.”
The case in Puerto Rico has added complexities given that in addition to having the political appointee–career employee divide, the professional trajectories of career employees are also influenced by political affiliation or perceived political affiliation. This results in the politicization of the entire system, rendering incentive systems more complex—causing divisions, conflicts and struggles for political power deep within the bureaucracy.\textsuperscript{188} Similar to other Latin American bureaucracies, the type of patronage that is manifested in Puerto Rico is not limited to the legal type of patronage Peters and Pierre,\textsuperscript{189} refer to (i.e. political appointees); rather, it permeates the merit-system, and is driven more by the supply of jobs and contracts to party members, family and friends than by attempts to control policy.\textsuperscript{190} Puerto Rico appears to fit Grindle’s definition of a patronage system, “where discretionary appointment for personal and/or political purposes is a principal route to a nonelected position in government for a large portion of those enjoying such positions.”\textsuperscript{191}

An explanation that has been given to explain the persistence of patronage is the quality of the democratic institutions in place. Democracy and democratic institutions have long been considered either tools for decreasing and controlling corruption,\textsuperscript{192} or as a process (i.e. democratization) that through a progression of phases results in the substitution of particularistic linkages between government and its citizens with universalist linkages that lead to more equitable distribution of costs and benefits throughout the population.\textsuperscript{193} This progression in

\textsuperscript{189} “Politicization of the Civil Service: Concepts, Causes, Consequences.”
\textsuperscript{190} Grindle, “Patrons and Clients in the Bureaucracy: Career Networks in Mexico”; Grindle, “Constructing, Deconstructing, and Reconstructing Career Civil Service Systems in Latin America”; Grindle, Jobs for the Boys: Patronage and the State in Comparative Perspective.
\textsuperscript{191} Grindle, Jobs for the Boys: Patronage and the State in Comparative Perspective, 18.
\textsuperscript{192} Johnston, Syndromes of Corruption: Wealth, Power, and Democracy; Rose-Ackerman, Corruption and Government.
\textsuperscript{193} Kitschelt, “Linkages between Citizens and Politicians in Democratic Polities”; Mungiu-Pippidi, “Corruption”; Scott, Comparative Political Corruption.
stages is also echoed in much of the patronage literature, which seems to equate democratization processes with the move from traditional, particularistic systems to universalistic ones. Nonetheless, this approach cannot explain the persistence of particularistic politics in advanced democracies, and it cannot account for other anomalies such as clientelistic-based parties in rich countries and programmatic politics in parties that amass the poor and working classes. It also cannot explain the case of Puerto Rico, where there is a stable government, a substantial amount of time since democratization has gone by, and there is a robust electoral system that is at face value programmatic and ideological, with a strong particularistic undercurrent.

Whether Puerto Rico is fully democratized is a matter of some debate. Some authors have argued that patronage politics in Puerto Rico are the result of the limited action space of political parties within the territorial/colonial arrangement with the U.S. For these authors, Puerto Rico is not completely democratized because of its citizens’ partial political rights. Even so, the stages of democratization approach does not take into account that democratization that is incomplete incentivizes corruption, because the institutional mechanisms that would allow for the participation and self-protection of those harmed are not in place. According to Johnston, serious corruption “...is a complex process of exchange with deep systemic roots.” For democracy to serve as a control for corruption, it has to allow “...not just elections but vigorous

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194 For example, Huntington, “Modernization and Corruption.”
196 Voter turnout in Puerto Rico is much higher than in any of the U.S. States. In 2000, the rate of voter turnout was 82% of registered voters, and 74.2 of eligible voting population (Jais Mehaji, “What We Can Learn from Puerto Rico,” FairVote, 2011, [http://fairvote.org/what-we-can-learn-from-puerto-rico](http://fairvote.org/what-we-can-learn-from-puerto-rico). In 2012, the voting turnout was 78.2 of registered voters (Comisión Estatal de Elecciones, retrieved from: [http://ww2.ceepur.org/es-pr/EducacionyAdiestramiento/Paginas/Preguntas-Frecuentes.aspx](http://ww2.ceepur.org/es-pr/EducacionyAdiestramiento/Paginas/Preguntas-Frecuentes.aspx)).
contention over real issues among people and groups capable of defending themselves politically, and of reaching political settlements sustained by their own lasting interests.”

Incomplete democratization can account for the rise of some types of corruption, such as clientelism and patronage, that have increased and become more entrenched in some democracies. In these environments, corrupt practices transmute and continue, adapting to the new institutional environments. Historical institutional theories can be used to explain the persistence of patronage over time.

**ii. Why Patronage Persists: Historical-Institutional Approaches**

Historical institutionalism offers a useful way of understanding at a macro-level the persistence of patronage in Puerto Rico and is useful for understanding differences and similarities exhibited across countries and for understanding why change that is expected often does not happen. This approach focuses on how created environments become constraining when institutionalized, and how historically contingent factors are embedded in the environment and continue to self-perpetuate and determine prospects for change or reform.

Puerto Rico is historically identified with Latin America but has operated within a U.S. legal and political framework since 1898. The public administration system in Puerto Rico is the legacy of two different historical traditions, stemming from two distinct colonization periods. Throughout both colonization periods there is a documented history of state-sponsored political discrimination, political repression, and political persecution of pro-independence, nationalist,

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201 Ippolito-O’Donnell, “Political Clientelism and the Quality of Democracy”; Stokes, “Perverse Accountability.”

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and left-leaning groups, including mass incarcerations, massacres (i.e. Ponce Massacre) and executions (i.e. Cerro Maravilla).\textsuperscript{205} Acemoglu, et al. have argued that the colonization process undergone by a country establishes an enduring institutional dynamic between the economic and political institutions in a country, whereby they are mutually reinforced and in this way maintained throughout time.\textsuperscript{206} Extractive institutions (e.g. current political institutions of North Korea, colonial Latin American) are established in order to benefit an elite at the expense of the wider population; this is their governing logic, and the governing logic of many patronage systems.\textsuperscript{207}

In Puerto Rico, as in most Caribbean and Latin American countries, Spanish colonization was characterized by the establishment of highly extractive institutions that had the purpose of benefiting the colonizers at the expense of the local populations.\textsuperscript{208} Historical institutional arguments contend that patronage practices within democratic societies can be seen as stemming from the legacy of these extractive institutions.\textsuperscript{209} This is supported by the literature on corruption on post-colonial and post-communist countries, which show the adaptation and continuation of corrupt practices within the confines of the institutions or processes that were put in place to contain them.\textsuperscript{210} Under this framework, the U.S. colonization of Puerto Rico can be considered a critical juncture. Under Spanish rule in Puerto Rico, political, military and judicial

\textsuperscript{205} Oficina del Gobernador, “Informe del Comité del Gobernador para el Estudio de los Derechos Civiles en Puerto Rico”; PRCRC, “Informe Discrimen y Persecución por Razones Políticas: La Práctica Gubernamental de Mantener Listas, Ficheros y Expedientes de Ciudadanos por Razón de su Ideología Política.”


\textsuperscript{207} Acemoglu and Robinson, Why Nations Fail.


\textsuperscript{209} Acemoglu and Robinson, Why Nations Fail.

\textsuperscript{210} Heywood, “Political Corruption”; Karklins, “Typology of Post-Communist Corruption”; Mungiu-Pippidi, “Corruption.”
authority were concentrated on the figure of the appointed governor. There were no representative legislatures, nor democratic controls of any sort until the 1870s, and “political persecutions were frequent.”

The subsequent U.S. colonization of Puerto Rico was marked by the transplantation of institutions that were founded on a more inclusive logic than Spanish institutions, and, like in the U.S., patronage served to democratize to some extent the civil service in Puerto Rico by changing the financing base of the political parties from the “hacendado” powerful class to the public employees during the 1940s.

Meléndez argues that it was under U.S. rule that Puerto Rican political parties reinforced their use of patronage, and considers this an element of “Americanization” in Puerto Rican politics. It was also under American rule that universal suffrage was approved (1936), and the first governor was elected rather than appointed in 1948.

Puerto Rico is not the only place where the U.S. civil service system has been tried. It was implemented as part of the U.S. colonization/occupation of the Philippines, Cuba, and the Dominican Republic. Kearney analyzed the case of the Dominican Republic, a prior Spanish colony, where a transplantation of the U.S. civil service system was attempted in the 1920s, as it had been done earlier in Puerto Rico and Cuba. Kearney showed how the merit-based civil service in the Dominican Republic was a legal formality and all personnel transactions were made on patronage considerations.

Kearney, writing in the 1980s, identified Puerto Rico as the only place in the Caribbean that had had success in implementing a merit-based civil service system and attributed this to the sustained U.S. presence. However, persistently high levels of

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211 Oficina del Gobernador, “Informe del Comité del Gobernador para el Estudio de los Derechos Civiles en Puerto Rico.”
212 Cordero-Nieves, “El Discrimen Político en el Empleo Público.”
213 Meléndez, “El Estudio de los Partidos Políticos en Puerto Rico.”
215 Kearney, “Spoils in the Caribbean,” 144.
216 Ibid., 145.
patronage and political discrimination have been documented in Puerto Rico’s public institutions, despite the sustained U.S. presence. It is possible that the U.S. presence might have impeded widespread clientelism to set-in, and that despite the similarities, patronage might take a different form than in other Latin American and Caribbean countries; a patronage system tempered by the merit system or highly adapted to the merit system.

Shefter provides a useful approach to understand the persistence of patronage in Puerto Rico, by looking at the way in which political parties initially pursued electoral strategies. Adopting an institutional approach, Shefter sought to explain the conditions that led political parties to pursue particularistic strategies (e.g. patronage) or programmatic strategies. Shefter argues that the composition of the party’s base is not indicative of the type of linkage that will be established, rather it is a combination of factors—including the tools at the disposal of the parties for amassing support, the existence of factions supporting civil service, the timing of democratization and bureaucratization, and the preferences of the electorate—that determine whether a particularistic or programmatic linkage is sought and established. According to Shefter, the preferences of the electorate can be traced to the ways in which they were initially mobilized, which depend on the resources that are available to the party. If the party members are already in public office or have access to those in public office, they will have at their disposal public resources to use as patronage, even if there is an established civil service prior to democratization, which was the case in Puerto Rico, where civil service preceded mass suffrage by thirty years. While a pre-existing civil service would arguably limit politicians’ use of public employment and benefits as patronage to some degree, “(t)he mere enactment of a civil-service statute is not sufficient to staunch the flow of patronage because such laws are not self-

Shefter, “Party and Patronage: Germany, England, and Italy.”
enforcing.”218 The first elected Governor of Puerto Rico and the founder of the Popular Democratic Party (PDP), Luis Muñoz Marín, had been active in politics as President of the Senate of Puerto Rico, which afforded him access to governmental resources in the mobilization of the electorate. According to Shefter, if the electorate were mobilized based on particularistic linkages, once the party is in power it will use public resources as patronage in order to maintain power. On the other hand, if the electorate were mobilized on more broad-based, programmatic basis, once in power, the political party will not tend to use public resources for patronage purposes. In the case of the two political parties that have alternated power in Puerto Rico since 1948, public resources were used as patronage in order for the parties to maintain power.219 Both parties targeted poverty stricken groups, which represented (and still represent) large swaths of the population; by providing them with government handouts, and leveraging federal dollars to do so.220 For example, Muñoz Marín would personally visit slums and rural areas to hand out shoes.221 A 1959 report by the Puerto Rico Civil Service Commission stated that Puerto Rico had a strong tradition of confounding party and government in the utilization of governmental resources, and gave as examples the use of public establishments, vehicles, and other public resources for political campaigns, as well as the distribution of public services based on the political affiliation of the recipients.222 Regarding public employment, the 1959 Commission found that the greatest vulnerability in personnel administration in Puerto Rico was favoritism

218 Ibid., 11.
based on political affiliation, and that specific groups (i.e. pro-independence and nationalist groups) were entirely excluded from public service.\textsuperscript{223}

Another important factor considered by Shefter is the preferences or inclinations of citizens.\textsuperscript{224} As long as there is a considerable amount of the populace that benefits and/or supports patronage-based systems, reform will prove very difficult. In Puerto Rico, the culture of patronage appears to be normalized. Patronage and politically discriminatory practices in public employment reflect the long-held belief that political opponents within the public service will sabotage the administration’s work, as well as the belief that only political supporters will work to support the administration’s policies.\textsuperscript{225} In the popular press and spoken language this in-group/out-group division is referred to as “tribalism,” with each of the three main political parties constituting a separate “tribe.” Studies in the 1960s showed that the views of Puerto Ricans regarding political rights were characterized by Ignorance regarding political rights, Intolerance towards those that held different political views, and by Indifference when others’ political rights were violated.\textsuperscript{226} If these trends have continued among large segments of the electorate, politicians would not be much inclined to address civil service reform.

\textsuperscript{223} Oficina del Gobernador, 67.
\textsuperscript{224} Shefter, “Party and Patronage: Germany, England, and Italy.”
\textsuperscript{225} Caballero-Fuentes, “Discrimen Político en El Sistema de Recursos Humanos del Servicio Público de Puerto Rico”; Cordero-Nieves et al., El Discrimen Político en el Empleo Público.
\textsuperscript{226} Oficina del Gobernador, “Informe del Comité del Gobernador para el Estudio de los Derechos Civiles en Puerto Rico.” Some of questions used to assess intolerance and indifference was to give subjects a scenario: “A group handing out flyers with: (a) information in favor of the Popular Democratic Party (majority party), (b) information in which your ideas and religious preferences are severely criticized; (c) your political ideas and preferences are severely criticized, (d) nationalism is promoted (minority group), (e) communism is promoted”. For each scenario subjects would be asked to agree or disagree with the following statement: “They should be given permission (to hand out the flyers)” and to choose a course of action “If the police arrests this group: (a) I would be in favor of this action (would be a witness for the police), (b) I would not do anything, (c) I would not know what to do, (d) I would do something in favor of those that were arrested (PRCRC, 1969, 9-10). Even in the case of majority group members being arrested by the police, over 70% of respondents would not do anything. This rises to almost 90% for minority groups. Interestingly, intolerance towards groups that criticize political ideas and preferences was substantially higher (more than four times higher) than for groups that criticize religious preferences or ideas (11% stated that those criticizing religious preferences should not be given permission, while 50.6% were against granting permission to groups that criticized their political preferences).
Even though historical institutionalism is useful for understanding at a macro level why patronage persists, this frame is not as useful for understanding the specific mechanisms of patronage.

f. How not Why Patronage Persists

Although the literature has consistently addressed the negative effects of patronage— which is a way of going beyond the patron-client relationship— these studies have mainly involved the study of societal-level macro indicators that are correlated with high levels of patronage.\footnote{For example, Ozturk, “Corruption, Job Patronage, and the Political Economy of Human Capital Investment.”} Given the difficulties in studying patronage or other corrupt behaviors directly, these findings are based on studies that often use proxies for measuring patronage (e.g. changes in the size of the public sector, number of transitory or irregular employees).\footnote{Oliveros, “A Working Machine.”} As stated in Chapter 1, studies that have studied patronage directly have typically focused on the relationships among the insiders— on their experiences and incentives. The outsiders and practices against outsiders are certainly mentioned, but the role of the outsiders in patronage systems has not been addressed.

In the next section I turn to micro-level explanations of how patronage (and other forms of clientelism) are sustained and perpetuated.

i. Sustaining the Patronage Contract: Patronage as a System of Insiders

There are three main mechanisms in the clientelism and patronage literatures used to explain how patronage relationships are sustained: loyalty and reciprocity, monitoring, and interest alignment.\footnote{Ibid.} But all three are based on insider dynamics. The outsider experience is mentioned and the outsider perspective is included in some of the studies\footnote{For example, Oliveros, “A Working Machine”; Stokes, “Perverse Accountability.”}, but the information gleaned from their experience is used in a limited fashion, or to understand the insider experience (e.g.}
for understanding who political operatives target or how the patronage contract is maintained), not as a mechanism by which patronage continues.

**Loyalty and Reciprocity:** Patronage or clientelistic relations are sustained based on the ties of loyalty and reciprocity among systems’ participants (insiders), and these dyadic relationships are considered the “micro-foundations” of patronage.\(^{231}\) For example, Auyero’s ethnographic study\(^ {232}\) focused on the day-to-day practices of political brokers and the perspective of the involved citizens (or clients) in a clientelistic network in Buenos Aires, to understand clientelism’s logic. Auyero found that the clientelistic networks in Argentina were fulfilling functions that the state had abandoned\(^ {233}\), and that these linkages were maintained by a quid-pro-quo logic between the brokers and the clients, which was reinforced by feelings of loyalty, reciprocity, and gratefulness, and by family, friendship or fictitious kinship ties with those in the inner-circles of the brokers. Grindle\(^ {234}\) also emphasized loyalty and reciprocity as important factors in maintaining patronage networks. Grindle focused on the experience of high and mid-level officials in a federal agency in Mexico who participated in informal intra-elite career networks, which are considered essential for career advancement. Grindle analyzed the different recruitment mechanisms that sustained these networks from the insiders’ perspective, including the importance of the political curriculum vis-à-vis the professional qualifications, the importance of the concept of “confianza” (trust), and how the use of “palancas” (levers)—who provide personal recommendations or introductions for getting a job—is an important mechanism for recruitment of people that will be trustworthy.\(^ {235}\) Grindle described how networks

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\(^{231}\) Grindle, “Constructing, Deconstructing, and Reconstructing Career Civil Service Systems in Latin America.”

\(^{232}\) Auyero, “The Logic of Clientelism in Argentina.”

\(^{233}\) Ibid., 60. Similar to the role that political-machines in the U.S. played for immigrants in the 19th century.

\(^{234}\) Grindle, “Patrons and Clients in the Bureaucracy: Career Networks in Mexico.”

\(^{235}\) Ibid., 43. On the use of palancas by the Mexican citizenry, see also, Arellano, “The Mexican Guanxi? An Empirical Study of ‘La Palanca’ and Its Link with Corruption Among Mexican Citizens and Public Officials.”
Based on friendship, trust, and personal loyalty bound public officials and allowed for rapid policy change, problem solving, and career advancement for the network participants. Additionally, the relationships between patrons and clients in these networks were further sustained by a common, aligned pursuit in career advancement. Both Auyero and Grindle focus on the functional aspects of the systems, and base their analysis on the perspectives of the systems’ insiders.

Monitoring: Monitoring and fear of punishment may also be another mechanism to sustain and make possible clientelistic exchanges and machine politics. Stokes combined interviews and survey data to understand how political operatives in Argentina make decisions regarding benefit distribution and concluded that the insertion of political operatives in the social networks of voters allows political operatives or brokers to monitor the political activities of voters and to reward or punish, contingent on voters’ behaviors. Stokes argues that the ability of the political operatives to monitor voters and the fear of punishment are the main factors sustaining clientelistic exchanges, and that clientelist parties “are effective to the extent that they insert themselves into the social networks of constituents.” Grassroots party operatives are responsible for mobilizing people, getting them to the polls to vote for their candidate, and for distributing rewards. Operatives in the Argentinian communities are well-known to constituents, “a long-time neighbor of the people she tries to mobilize,” which gives the operative a wealth of information regarding the particular individual’s condition (e.g. job loss, other family members’ political affiliation), and that knowledge gives them a level of sophistication in deciphering who individuals voted for, as one of Stokes’ interviewees explained “you know if a

236 Grindle, “Patrons and Clients in the Bureaucracy: Career Networks in Mexico,” 56.
237 Stokes, “Perverse Accountability.”
238 Ibid., 318, 324.
239 Ibid., 318.
neighbor voted against your party if he can’t look you in the eye on election day.”

For Stokes, these practices distort democratic processes:

Democratic accountability usually means that voters know, or can make good inferences about, what parties have done in office and reward or punish them conditional on these actions. But when parties know, or can make good inferences about, what individual voters have done in the voting booth and reward or punish them conditional on these actions, this is perverse accountability.

But the story of the voters who were punished and the consequences are absent. Instead, the effect that fear of punishment has on voters is used only to explain how the clientelistic exchange is maintained. Even though Stokes surveyed voters randomly—which would presumably include insiders and outsiders—the results of the survey were used to understand how machine operatives (insiders) make decisions.

**Interest Alignment:** Alternatively, alignment of interests between the patrons and the clients may be what sustains the patronage contract. According to Oliveros, feelings or reciprocity or the threat of patronage are not necessary for maintaining patronage contracts.

Oliveros studied the political work of public employees, focusing on mid- and low-level bureaucrats in three Argentine municipalities. The expectations for political services in exchange for a job go well beyond the vote, given that job patronage is expensive: there are limited number of public jobs, and when given, they cannot be easily taken away from the recipient. Oliveros was interested in the political services provided by recipients of job patronage and why they provided these services after receiving the job, when they could have

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240 Ibid., 317.
241 Ibid., 316.
243 Ibíd.
244 Ibid.
reneged. Oliveros found that recipients of job patronage provided important political services and that they did so because it was in their own best interest, their interests and the patron’s were aligned, and therefore the contracts were self-enforcing; there was no need for feelings of reciprocity or for threat of punishment.

In Oliveros’ work, the experience of the outsider is considered one of the factors that indirectly sustain the patronage contract. The fear of losing one’s job or of negative changes to one’s employment conditions provides an incentive for doing political work in order to keep one’s patron in power.

Using the same logic that the incumbent applied to hire his supporters, a new incumbent will replace old employees with his own supporters. A new politician will want patronage jobs to be distributed to those more likely to provide political services for him and only his supporters could credibly commit to do that in the future... As a result, supporters of the incumbent have a huge incentive to provide political services to try to keep the incumbent who hired them in power.

The self-enforcing contract argument partly rests on the insiders’ witnessing, and wanting to avoid, the negative employment changes that outsiders experience. The experience of the person suffering the negative changes and the direct effects of this experience on the patronage system are not considered or studied, instead they are only used as one of the factors that indirectly sustain the patronage contract.

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246 Oliveros acknowledges that the self-enforcing theory of patronage does not fit well the experience of the outsiders, and that the punishment theory could be used to explain why some members of the opposition party participated in visible political activities of the party in power (“A Working Machine,” 230).

247 Ibid., 63.
Although some authors have addressed the effect of patronage systems on those that are excluded\textsuperscript{248}, the focus has been on the effects of the exclusion, such as on costs related to political discrimination cases,\textsuperscript{249} or on aggregate outcomes such as decreased investments in human capital by the general population, which are correlated with important conditions for patronage systems (e.g. poverty and inequality). For example, Ozturk argues that human capital formation will be negatively affected by patronage politics, when there is a large public sector and there are no employment alternatives in the private sector for educated individuals: both the beneficiaries of patronage as well as those that are excluded will tend to invest less in education, because education is not required (for the politically connected), and does not pay off (for the educated but not politically connected). Using survey analysis, Ozturk found that general citizens’ perceptions of job patronage lowered the probability of college degree attainment.\textsuperscript{250} Although Ozturk theorized about the incentives for educational investments of the excluded or outsiders in a patronage system, his survey questions did not measure direct experience with patronage\textsuperscript{251} (e.g. had the respondent been excluded? Had the respondent received a patronage job?); rather, perceptions of patronage were measured, and the instrument did not discern between the insider/outsider experience.\textsuperscript{252}

\textsuperscript{248} For example, Ozturk, “Corruption, Job Patronage, and the Political Economy of Human Capital Investment.”
\textsuperscript{249} For example, Cordero-Nieves et al., El Discrimen Político en el Empleo Público; Vázquez-Irizarry, “Aspectos Legales del Discrimen Político en Puerto Rico”; Colón-González, “El Discrimen Político en el Empleo Público Mediante la Manipulación de los Sistemas de Mérito.”
\textsuperscript{251} Questions 8, 14, 23, and 24 are statements that test the hypothesized causal relationship between job patronage and educational outcomes. The questions ask about extent of agreement or disagreement with the following statements: question 8: “if favoritism affects chances of getting a government job, citizens have weaker incentives to invest in education”; question 14: “because favoritism determines who gets government jobs, I invest much less in education”; question 23: “I will invest less in my children’s education, if I expect high levels of corruption in public sector hiring practices”; and question 24: “Even if I am highly educated, best jobs will go to people with connections” (Ibid., 193–96.)
\textsuperscript{252} Although Ozturk (2005) includes an open-ended question regarding the occupation of the respondents, he did not incorporate these answers in his analysis of the patronage-related hypothesis.
Alternative mechanisms through which the outsiders’ experiences might be reinforcing the patronage system directly, remain underexplored, even though there are stark examples of how outsiders, or those that were excluded, can obstruct any reform-related reforms. This might be partly a function of the selection of studying patronage systems in more stable environments, such as those with well-established political machines or where there is one-party rule. The classical conceptualization of patronage systems as based on exchanges, results in a one-sided view of patronage. In sum, although widely studied in both the public administration and corruption literatures, patronage is consistently examined with a near-exclusive focus on the insiders, or those directly involved in the exchange of political support for public jobs or benefits, while ignoring the simultaneous dynamics with outsiders, or the individuals whose work conditions are negatively affected because of their real or perceived political affiliation. Additionally, patronage studies frequently focus on the dynamics sustaining relationships mainly when the party is in power, as a static status, rather than as a cyclical experience, where one’s position changes along with one’s party’s (or a party’s faction). This focus results in patronage being modeled as exchange relationships: in terms of a benefactor (be it political party, or individual politician) giving jobs, contracts, or any other public good in exchange for political support. This research project proposes a fourth mechanism sustaining patronage that lies in the

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253 For example, in the case of Naples, Chubb (1981) describes how a reform-party that won in a city with a well-entrenched clientelistic tradition, was unsuccessful at maintaining power, given that they were not able to meet the particularistic expectations and hopes of their supporters, who had been excluded under the prior regime.


cyclical nature of the patronage experience, and specifically on the outsider experience; it integrates both the giving and the taking away as different mechanisms that bind public employees and politicians together.

The literature on political discrimination in Puerto Rico provides a current point of departure for answering these questions, given that it focuses mainly on the practices that are directed towards the outsiders and on the costs that these practices represent. But by focusing exclusively on the practices against outsiders, this literature also misses the changes in status (from insiders to outsiders; from outsiders to insiders) that are so crucial to understanding the experience of the informal patronage system in the Puerto Rican context.

The term political discrimination in this literature is used to refer to the differential treatment of a category of people based on their political affiliation, preferences, or beliefs. Although political discrimination brings to mind its grosser forms, such as political persecutions or public policies that systematically exclude or discriminate against specific ethnic minorities or political groups, authors who study Puerto Rico focus on more subtle practices of political discrimination in the context of public personnel management, such as job patronage and the unofficially sanctioned harassment of career employees of the opposition party. In this dissertation, I use the term political discrimination more narrowly, similar to how it is defined in Puerto Rico’s jurisprudence, to refer only to the set of practices used against outsiders, or

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258 Ibid.

259 Political discrimination is also well defined in existing jurisprudence. While the Supreme Court established that the First Amendment protects government employees from adverse actions based on their political affiliation or beliefs (*Rutan v. Republican Party of Illinois*, 1990). Lower courts have further defined what political discrimination is. The 1st Circuit Appellate Court defined a political discrimination claim as actionable when the following
members (actual or perceived) of opposing political parties. Political discriminatory practices in this context—as the patronage system more broadly—are used for party benefit and constitute a form of systemic political corruption.

2. Methodology
In this dissertation I followed a combined strategy of interspersing in-depth interviews, participant observation and systematic analysis of political discrimination court cases in order to understand the informal patronage system in its entirety—understand both the preferential treatment awarded to insiders and the prejudicial treatment towards outsiders—and how these practices are inter-related, and how through different mechanisms they reinforce and sustain the patronage system.

The main objectives of the research project were: (1) to deepen understanding about the mechanisms sustaining patronage identified in the pilot phase, specifically the ones that arise out of experiencing the insider-outsider cycle, (2) to understand the power hierarchy and structures of the informal patronage system, including informal actors, such as political groups working within agencies and the linkages between these groups, party officials, and elected officials; (3) understand the tools and mechanisms of the informal system vis à vis the tools of the formal system (e.g. unofficial lists of employees’ political affiliation vs. the official HR lists), as well as the use of the formal system’s tools for patronage or political discriminatory purposes; and (4) to

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elements are established: (a) the defendant and plaintiff belong to different political parties; (b) the plaintiff’s political affiliation is known by the defendant; (c) there was an adverse employment action; (d) and political affiliation was a substantial or motivating factor for such action (Ocasio-Hernández v. Fortuño-Burset, 640 F.3d 1 (1st Cir. 2011), 2011). Therefore, political discrimination as defined in law specifically refers to the negative actions directed at members of the political opposition (outsiders). These are distinct from and not necessarily linked to favoritism actions. It was not always so. State jurisprudence in 1990s cases defined political discrimination as a function of job patronage actions—in addition to establishing that there was no rational reason for the adverse action and that the plaintiff was clearly identified with a political party; it was necessary to establish that the plaintiff was replaced by an employee of a different political party that shared the same political affiliation as the appointing authority (Orta v. Padilla Ayala, 131 D.P.R. 227, 1992; Rodríguez Cruz v. Padilla Ayala, 125 D.P.R. 486, 1990); the politically discriminatory action had to be directly tied to an action benefiting party loyalists or supporters, which is no longer the case (López Colón v. Miranda Marín, 166 D.P.R. 546, 2005).
understand the role of “confianza,” (trust) which was a repetitive theme in the interviews and emerged as highly important in the ongoing fieldwork.

**In-depth Interviews**

Fieldwork began with an initial pilot phase during December 2014-January 2015, during which I conducted in-depth interviews (N=11). Given the difficulties in researching illegal or unethical actions, the intent of the pilot project was to identify whether the project was viable: get a sense about the willingness of individuals to talk about their experiences, and of the difficulties that might be encountered in the field. The pilot project showed that extraordinary access would be possible through the trust-based professional networks of the interviewees. The interview questions centered on political discrimination, but explored the following themes: [1] awareness of political affiliation (self and others), [2] perceptions or attributed characteristics to members of different and of the same political party, [3] significance of political affiliation as a criterion in the personnel management of career employees (or in the interviewee’s career), [4] mechanisms or strategies for inclusion of political affiliation as a criterion in personnel transactions and other transactions (e.g. contract awarding), and [5] expectations of the system (rewards, punishment) based on interviewee’s political affiliation (e.g. do employees expect to be punished or rewarded because of their political affiliation?). The script in Appendix I. has the full listing of questions used in the pilot phase. Nonetheless, an unstructured interview approach was adopted during the pilot phase. I quickly learned that an unstructured approach with follow-up questions was better for addressing the politically-sensitive topics, than following the script. When I used the script, the questions seemed to interrupt the flow of the interviewees’ narrative, and at times, the questions appeared to make them wary. But when I asked about their experience/opinion on the role of partisan politics in Puerto Rico’s public agencies as an open-ended, first question, they
would talk naturally about their own experiences (direct or witnessed) with political discrimination and politically discriminating, “politicking,” and political groups.

The next phase of the research project continued with 17 unstructured interviews. Twelve new in-depth interviews were scheduled, and 6 interviewees from the pilot phase were re-interviewed—to capture their experience as they underwent yet another change in political administration (elections were in November 2016, and there was a change in political administration from the pro-Commonwealth Party (PPD) to the pro-Statehood Party (PNP)). As in the pilot phase, interviewees included former and current political appointees and trust employees, former and current government employees (including human resources personnel), party activists (“militantes”260) and operatives, former and current government contractors, and regular citizens.

The in-depth interviews lasted from 1.5 to 3 hours. There were follow-up conversations with some of the interviewees. The open-ended, in-depth interviews intended to capture the interviewees’ experience and his/her points of view, providing a more nuanced account of the topic of interest. The in-depth interview provides the opportunity and the flexibility to prompt the interviewee on specific topics, to clarify answers and questions, and for unexpected relevant themes to emerge in the conversation.261

The sample (N=23) included individuals with a great deal of experience in government. Two worked less than 15 years, 15 had worked between 15 and 30 years, and 6 had more than 30 years of experience (2 were retired). All twenty-three interviewees held career appointments at some point during their careers; of these, twelve also held political appointments, and six had

done contracting work for government (4 as independent consultants, 2 under a contractor or
government grantee). The sample included individuals in different levels within government:
managerial, clerical, and direct service; and that had worked at the state agency level (central,
regional, local offices), and in Municipalities. The two main political parties were represented in
the sample: eleven interviewees were affiliated with the pro-Commonwealth Party (PPD), nine
were affiliated with the pro-Statehood Party (PNP), and three of the interviewees did not disclose
their political affiliation. Interviewees had experience in a total of 13 state agencies or
instrumentalities. All employees had worked in state agencies—which are thought to have the
strongest merit systems within the commonwealth (as compared to public corporations and to
municipalities)—and the most professional workforce.262 Findings were consistent across party,
across agencies, and across job types. For a break-down of interviewee characteristics, see
Appendix II.

From the interviews, I learned about the informal rules, expectations, beliefs, and
rationalizations sustaining the informal patronage system; about the experience of the system
from the perspectives of both the insider and outsider status, the effects of experiencing
favoritism or discrimination, and experiencing discrimination after having experienced
favoritism and vice-versa; as well as understanding favoritism and political discrimination as
collective experiences.

Interviews were transcribed and coded—open coding of initial concepts was followed by
more focused coding. Early in the interviewing and coding process, interviewees’ experience of
the patronage system as cyclical, became evident: with work conditions fluctuating according to

262 Yolanda Cordero-Nieves, “Consideraciones Sobre Los Posibles Efectos de La Descentralización en La
Administración del Servicio Público: El Caso de Las Regiones Autónomas en Puerto Rico,” Revista Estado,
their party’s insider (in-power) or outsider (out-of-power) status, sometimes with dramatic changes to their work conditions. It became evident the effect of each experience in reinforcing different rules of the informal system. I focused the coding of both interview transcripts and political discrimination cases along this insider-outsider experience, starting with the interviewees’ entry into the system, followed by their change in status when their political party loses elections, and lastly, on how the cycle is continued as employees become again insiders when their party is again in power. The frequency of the changes among political administrations, as well as the limits imposed by the merit system (which prevents massive dismissals), provides the opportunity of studying the interactions between those that are included and excluded in a particularistic system; shedding light on dynamics, that although present, might be harder to study in more stable particularistic systems.

The patterns are very clear, the normalization is very clear, as reflected in the formal and informal interviews, and in the court cases; it is contained in everyday speech, almost unperceivable because of their normality; from my neighbor asking if I have a “pala” (well-connected person) to get my niece into a good public school, to the Uber driver telling me how she was fired and then able to get a job in government through a politically-connected friend, “it’s the only way, with politics.”

**Limited participant observation**

Informal conversations (three dozen), were non-scheduled, unstructured conversations that arose in the course of my daily dealings in Puerto Rico over a one-year period (August 2016-August 2017) as a regular citizen, former government employee, government contractor, and as a member of a non-profit government transparency group. Ethnographic methods are ideally suited for this study, given that it allows for a richer and deeper understanding of the informal
Informal conversations (lasting 15-40 minutes) were held with 3 dozen former or current public employees, former high-level political appointees, government contractors, politicians, press members, and regular citizens who provided a variety of viewpoints that offered additional context to the study. These informal interviews were highly consistent with the evidence from the formal interviews and cases and confirmed how normalized the informal patronage system is. I also draw evidence from news articles, televised newscasts, radio programs, transcripts of senatorial investigations, senatorial reports, statements from the FBI on relevant corruption cases, and from attending one day of a public corruption trial and following it closely.\footnote{264}

**Court case archival analysis**

The method of in-depth interviews was complemented by archival research to further explore questions that arose out of the analysis of the interview material and to confirm or disconfirm conclusions and generate new ideas. In which terms are these practices defended? With which arguments are they challenged? What allows for their continuation? Archival research is a powerful method for the in-depth study of different issues; It can be a complement to participant observation, and has several advantages, in the sense that one can observe more instances of events (e.g. as captured in court proceedings), without in any way contaminating the environment or without worrying about lapses in the memory of interviewees.\footnote{265}

To learn more about the landscape of political discrimination and to understand

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systematically the ways in which it operates, I analyzed 50 randomly selected political
discrimination cases in the Commonwealth of Puerto Rico, which represented 10% of the total
discrimination cases in Puerto Rico in the Westlaw database266 (for details on the
selection see Appendix III). Cases refer to the written opinions of lower court and appellate
judges, and do not contain the entire case record (e.g. no court transcriptions). The cases do not
allow for making generalizations regarding the success of the lawsuits given that completeness
of records vary, and the resolution for some cases is unclear—one cannot tell from the data if the
case was settled, or what was the ultimate decision regarding the case. Nonetheless, the cases did
provide an extremely rich record of how the informal patronage system is experienced when
one’s party is out of power, as well as of the logic of the patronage system as reflected in both
defendants’ and plaintiffs’ rationalizations, as well as in judges’ analysis of the evidence.

The initial court case analysis was complemented with more in-depth archival research of
12 selected political discrimination cases conducted at the United States District Court for the
District of Puerto Rico, and subsequently using the Public Access to Electronic Court Records
(PACER) system. Selection of cases was purposeful—cases that made it to trial, where witnesses
were deposed and testified, where evidence was examined. The court transcripts, depositions,
and evidence of the selected cases were examined in depth, with special attention to gathering
information was very hard to gather through the interviews, especially as it related to the work of
political groups working within state agencies, their work of political surveillance, and the work
of human resources personnel and use of personnel processes in support of politically-
discriminatory objectives. Individuals with this direct knowledge and involvement were the most
difficult to access. See Appendix IV. for list of cases.

266 Thomson Reuters Westlaw Database search: January 18, 2016.
Through docket research of political discrimination cases, I was able to get hard evidence backing up the information provided by interviewees.\textsuperscript{267} For example, interviewees repeatedly mentioned the existence of unofficial lists of employees’ political affiliation, which worked like formal merit-based lists, determining hires, promotions, and firings, but few had seen the lists. Going through the evidence in one of the court case dockets, I found copies of one such list, with accompanying sworn statements describing how this list had been sent from the political party to the agency head, and from the agency head to the human resources director, in order for the employees’ to be protected from government-wide layoffs. The evidence contained in these court case dockets provided invaluable evidence on the tools of the informal patronage system in Puerto Rico.

Court cases all follow a very similar pattern to one another and are consistent with the experience of interviewees as both insiders and outsiders. A description of the period before elections, when the plaintiffs were productively working, usually as an “insider,” followed by the increased politicization that characterizes the period of elections, and the eventual political harassment or politically motivated personnel actions (hostile work environments, demotions, dismissals or constructive dismissals) after a change in administration turns them into “outsiders.”

Description of the plaintiffs usually include their professional and political qualifications, and center on the alleged negative consequences suffered because of their political affiliation after a change in administration. But political discriminatory intent is very hard to prove. Cases of political discrimination require that non-policymaking government employees produce

\textsuperscript{267} This archival work was possible thanks to two University at Albany, Research Fellowship Awards (2016-2017 and 2017-2018) and to a Dissertation Award from the Section on Personnel Administration and Labor Relations (SPALR) of the American Society for Public Administration (2018).
sufficient evidence to “allow a rational factfinder to find that their political affiliation was a substantial or motivating factor behind the adverse employment action taken against them,”\textsuperscript{268} once this burden is met, defendants then have to “articulate a nondiscriminatory basis for the adverse employment action and prove by a preponderance of the evidence that it would have been taken without regard to the plaintiff’s political affiliation,”\textsuperscript{269} and they often do, citing programmatic reasons or fiscal reasons for their decisions. The merit system tools are sufficiently manipulable to be used for patronage purposes and can effectively camouflage the illegitimacy of the processes. The merit-system tools are not only circumvented, they are actively used for discriminatory purposes.\textsuperscript{270} These cases reflect how difficult it is for plaintiffs to prove discriminatory intent, especially to prove that defendants knew their political affiliation.

Evidence for each chapter draws from the in-depth interviews, limited participant observation, court-case analysis, and analysis of other primary sources, such as senatorial hearings, government reports on political discrimination, and newspaper articles.

The following section provides a general overview of the model of the informal patronage system that organizes this dissertation, as well as an overview of the context, including some of the structures and tools of the informal patronage system. I also introduce some concepts that will be discussed throughout the dissertation.

3. Patronage as a System of Insiders and Outsiders

As discussed in Chapter 1, longstanding and widespread practices of manipulating the merit system for patronage purposes, have created a politicized bureaucracy whose political

\textsuperscript{268} Rodríguez-Ríos v. Cordero, 138 F.3d 22, 24 (1st Cir.1998).
\textsuperscript{269} Ibid.; See also: Acevedo-Díaz v. Aponte, 1 F.3d 62, 66 (1st Cir.1993); Angulo-Alvarez v. Aponte de la Torre, 170 F.3d 246, 249 (1st Cir.1999).
\textsuperscript{270} Cordero-Nieves et al., El Discrimen Político en el Empleo Público; Colón-González, “El Discrimen Político en el Empleo Público Mediante la Manipulación de los Sistemas de Mérito”; Cordero-Nieves, “El estudio del discrimin politico en el empleo público: desafíos iniciales”; Mayra W. Rivera Rodríguez, El discrimin politico en el empleo público municipal en Puerto Rico (San Juan, Puerto Rico: Universidad de Puerto Rico, 2012).
composition reflects the changes in political administrations. The main two political parties, the pro-commonwealth party (PPD) and the pro-statehood party (PNP) have been alternating power every 4 to 8 years for the past 50 years, and their personnel practices have for the most part served to benefit individuals aligned with the party in power. This has resulted in a layered system of the main two political factions that is reflective of the political administration changes, and in cohorts that collectively experience the insider and outsider status. *Insiders* are those involved in the direct exchange of jobs for political support—those who are benefited when their political party is in power; while *outsiders*, refers to those who are negatively affected because of their real or perceived political affiliation, when their political power (real or perceived) is out of power. But in this changing context, with frequent alternations of power—the insider and outsider status are transitory, and the experience is highly dynamic and cumulative. This dissertation is organized following the alternating and repetitive cycles of being benefited or punished by the system as political parties cycle in and out of power. This contrasts with much of the literature on patronage, which focuses on the experiences of *insiders*. As this dissertation suggests, patronage is differentially experienced depending on the status as insider or outsider of the individual or group, with each of these experiences reinforcing the patronage system through different, but interrelated, mechanisms.
This dissertation also addresses the informal power structures that underlie and shape the experience of patronage. This patronage system is embedded in a highly regulated civil service system, and within the mainly informal, but highly organized political structures operating within state agencies. The influence and control that political structures within state agencies exert over personnel processes, allows parties to draw valuable resources from state agencies (campaign contributions, campaign workers, contracts for party supporters, among others). The patterns of experience can be seen as manifestations of the underlying power structures and by the particular ways in which the formal merit system and informal systems interact and overlap. In Figure III. I attempt to visually capture the individual/group experience as tied to the electoral victories or losses of parties. The personnel system functions as a tool of control for political parties. As political parties gain control over the personnel system, they can control other governmental

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271 This assumes a change in political administration every four years for the sake of simplicity, but a group can be “insiders” for years or even decades when there is no change in the administration, especially at the Municipal level. At the State level, it frequently alternates between the two major parties.
functions (e.g. contracting) to their benefit.

Figure III. Patronage as a Cycle, Electoral Maps 2004, 2008, 2012.

In this section I provide an overview of the infrastructure and tools of the informal system in place—that underlie, reinforce, and shape the experience of patronage. Additionally, I introduce some of the key concepts that are addressed throughout the chapters.

\textit{a. The Informal Infrastructure}

One of the factors that sustains machine politics is parties’ ability to surveil the political activities of voters, and to reward or punish voters, contingent on their political behavior.\footnote{Stokes, “Perverse Accountability,” 324.} The organizations that facilitate political discrimination in Puerto Rico are highly formalized committees of the main political parties—these groups are powerful, and embedded within state agencies and public corporations.\footnote{Partido Popular Democrático, “Reglamento;” Cordero-Nieves, “El Discrimen Político en el Empleo Público”; Cordero-Nieves, “El estudio del discrimen político en el empleo público: desafíos iniciales;” see, for example, O’Connell vs. Marrero Recio, 724 F.3d (1st Cir. 2013); Torres-Heredia, et al. v. Lopez-Pena, et al., 708 F.Supp. 2d 148 (D.P.R. 2008); “Transcripción Vista Pública, Comisión Especial para el Estudio de las Normas y}
collect 10-15 percent of the total funds used in political campaigns, there is not much information about how these organizations operate, given that they function with a lot of secrecy.

Although in many court cases as well as in newspaper articles there are glimpses of the informal infrastructure and its tools—such as references to employees that serve as “liaisons” with the political parties, mentions of employees that bring resumes or send pictures of employees to decision-makers for personnel decisions, mentions of ticket sales for political activities in agencies, Twitter and Facebook posts of the public employee political groups, or public discussion of legislation to curb politicization in the bureaucracy— I found further and rich evidence of the existence and use of these lists and of the political groups in political discrimination and public corruption court cases. I was able to interview several public employees that were or had been directly involved with the groups, but they were extremely guarded. Even witnesses in senatorial investigations and defendants in political discrimination cases were evasive in their answers when asked about these groups, their activities, and their personal involvement with the groups. But, at the same time, it is this political infrastructure

275 Cordero-Nieves, “El Discrimen Político en el Empleo Público.”
276 For example, the Secretary of the Department of Education, Julia Keleher, a political outsider from Philadelphia, explained in an interview how she selected 30 employees from both parties out of 400 applicants to participate in some agency training, when the reporter asked why she had specified that employees were from both parties, Secretary Keleher replied that employees expected that trainings would only be for employees of one group (from the political party in power). The reporter then asked how the Secretary knew which political party employees belonged to, Keleher replied that she had been sent pictures of the people identifying them politically (“¿Y cómo se sabe de qué partido es cada cual? -Enviaron fotos con gente identificándolos. La gente entre sí”) (“Julia Keleher relata sus frustraciones en el Departamento de Educación,” El Nuevo Día, February 4, 2018, https://www.elnuevodia.com/noticiaslocales/nota/juliakeleherrelatasfrustracioneseneldepartamentodeeducacion-2395680/).
277 “Taquillas”
that allows high-level decision-makers to wash their hands of responsibility or deflect blame, and, for example, be able to declare in sworn depositions that they did not know the political affiliation of employees in their agency.²⁷⁹

Each political party has an organization, with an elected board of party activists, in each government agency. These organizations are involved in the elaboration of employee lists that specify the political affiliation of the employees and are used to favor or to demand political services and contributions from insiders, and to discriminate against political opponents or perceived political opponents. There are official lists of individuals that qualify because of merit to occupy certain positions, as well as unofficial lists of individuals that qualify because of political allegiance to occupy these positions (e.g. is the job candidate a known supporter of the party? Does the job candidate’s family militate for the party?). These lists work like formal merit-based lists, determining hires, promotions, and firings. The group officials (President, etc.) are the ones that assemble and manage the lists (“These people, they know everyone from the A to the Z”), in addition to organizing party activities within the agency, “supervising” political appointees, collecting money from employees, and gathering intelligence/information for the party:

In each agency there are a group of people that are from the party’s base, right? That take care of: identifying and reaching out to the people that are going to be contributing, of maintaining group cohesion, of inviting to political activities... divulging the party’s messages... They are the ones that organize people, the ones that collect money, threaten

²⁷⁹ “I do not know the political affiliation of any of my employees; it’s not a question that I ask” (“Deposition of Zoimé Álvarez Rubio, Esq.,” Franco Figueroa, et al. vs. State Insurance Fund Corp., et al., Case 3:11-cv-01025-JAF, Document 99-2, Filed 08/07/12). In another example, when the Executive Director of a public corporation was questioned regarding allegations of her involvement in selling political raffle tickets to contractors, she answered that she collaborated with her political ideal within what was legally allowable, and although she was caught on tape talking about her plan on how to distribute $1,000 tickets to be sold for the party among the agency regions, she denied any wrongdoing, stating that the recording was outside of working hours and outside of the agency. Furthermore, she emphatically denied her involvement in selling tickets to contractors, declaring that “political structures exist within the corporation for those purposes.” Her remarks were recorded during a meeting of the Executive Director with that “political structure.” (“Zoimé Álvarez niega cometer un acto ilegal,” (March 2, 2011), El Nuevo Día, https://www.elnuevodia.com/noticias/politica/nota/zoimealvarezniegacometerunactoilegal-904242/).
those that do not pay, it’s like a mafia. ... It is official in the sense that each party has its organization, and within its organization, these persons belong to those committees. It is not official in the sense that it is not sanctioned by the employer... it falls outside official limits...\textsuperscript{280}

Each agency (the agency head and the political groups) are assigned a quota of money that they have to collect for the party in power. They collect this money sometimes legally, as in selling raffle tickets outside work premises and work hours, but some of these money-raising activities are illegal and coercive, as the Blue Circle scheme which will be briefly discussed in Chapter 3, or can lead to corrupt activities, as in the case of the convicted former Secretary of the Puerto Rico Department of Education (discussed in Chapter 6). As an interviewee expressed, “agencies feed directly into the veins of the parties.”\textsuperscript{281} In Figure IV., I attempt to capture the embeddedness of these political groups at all levels of the Executive branch, by overlaying the official party symbols of the two main parties—symbolizing the public servants’ political groups—over the official organizational structure of the Puerto Rican government. These political structures within public agencies, result in highly complex authority structures.

\textsuperscript{280} Career employee / political appointee.
\textsuperscript{281} Career employee.
This figure is a simplification of the political networks within government instrumentalities because it does not contain other of the main organizations within parties, such as legislator committees, mayors’ associations and organizations that group district commissioners (líderes de barrio) and district-level organizations—all these organizations are also involved in personnel recruitment given that these other committees, as well as individual mayors, legislators, and district commissioners, are also involved in making recommendations for all sorts of positions in government (career, political appointments, etc).

An interviewee with direct knowledge of the political structure, explained how power within agencies did not necessarily match the official positions of employees:

…don’t think of trust positions, it can even be the clerk, it can even be the driver. But that driver is the one who has the power because he is the one who has the contacts, he is the one who knows or the one who worked for and ran the campaign for so-and-so, or who

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has the purchasing power to reach… Even if he is in a driver’s position it turns out that he contributed or raised sufficient funds. So that person has his affiliations. By the way, I met the ______ committee of the agency! … I went to an activity and they were there, and none of them has a trust position283, which was what called my attention. Because you (as a political appointee) … have to sit down and report to a clerk and justify to them the reasons that led you to make a decision that it turns out affected the friend of the mayor. Do you get the picture? It’s incredibly uncomfortable, isn’t it? … you have to justify it (your decision) to the party leader, within your agency.284

She went on to explain the power of the individuals in these groups:

Remember, these are “recaudadores” (fundraisers/people who raise funds for the party) and sometimes these persons… they are not fundraisers because they are board members. (They are board members) because they raised funds, because they have raised funds for a long time. That is, these are people who are known within politics, maybe he is a “líder de barrio”285 (district commissioner) and whether you believe it or not, a “líder de barrio” has tremendous power…

[Tell me about it]

A “líder de barrio” will say who we will help and won’t help within the “barrio,” which funds we can give them. Or, if we are talking about financial help—those famous refrigerators, washing machines… don’t you see that the “líder the barrio” is the one that mobilizes people when it’s time to vote?! 286

These groups draw their power not from positional authority within the agencies, but from their position as valued fundraisers and mobilizers within the parties. For example, referring to the level of power and access of a political operative in her agency, an interviewee remarked, “she eats rice and beans with the Governor!” The operative had a very low-level clerical job but exerted an immense amount of power within the agency.

As a former Legislative employee explained, “when you really look at it, the power of the Secretary of an agency is very limited. They mostly have power of appointment over their trust staff (empleados de confianza), but from that level down, the personnel system is managed from

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283 Which are the highest positions in agencies and in government, generally.
284 Career employee.
285 “Barrio” refers to a specific geographic demarcation within a municipality;
286 Interviewee identifier redacted.
the District Senators’ offices.” But it is not only District Senators who influence personnel processes. Personnel management is influenced by employee political committees, “líderes de barrio,” mayors, fundraisers—all connected through the party. As a former agency head and political operative remarked, “there are entire agency layers that are appointed by mayors” [appointed?] “not officially, but unofficially appointed,” he went on to explain how the further away from the central office levels, the less control government has over employees at the regional or local levels—the greater the control of the party.

Interviewees talked about a deterioration of public service over the last thirty years, of a loss of moral values, of a logic of pillaging and plunder taking over public service, of people no longer even concealing how they got their jobs or contracts, but boasting about it; and how unqualified people were often given jobs or contracts and the difficulties this created in the workplace. As U.S. Attorney for the District of Puerto Rico, Rosa Emilia Rodríguez expressed, “contracts are awarded to whom is best connected, not to the best bidder.” As several long-time public employees expressed, they have never seen either contracting or personnel management done differently—than along party lines, than through “palas” or politically connected connections. In addition to the frequent alternation between the two main political parties since the late 1970s, one of the factors that interviewees identified in the increased politicization of the public personnel system was the 2004 decentralization of the HR system in Puerto Rico. Prior to this, Puerto Rico had a formally centralized human resources system, and a

287 Political appointee.
288 Political appointee.
seemingly more orderly informal system, with an established geographically-based rotational system to process party endorsements.\footnote{Goodsell, \textit{Administration of a Revolution}, 96, citing Honey 444-445, interview with Roberto Sánchez Vilella, April 26, 1963.}

Act No.184 of 2004, decentralized the personnel system, recognizing 118 individual administrations in the Executive Branch in addition to the 78 Municipalities. Although the intent of the law was to modernize the public administration system, it had a different effect. As a former HR Director expressed, “this prostituted the HR system in Puerto Rico,” individual agency administrators had so much power that they could change pay scales and job classifications, among others. The implementation of this 2004 law contributed to the dramatic bloating of the public bureaucracy.\footnote{“Government of Puerto Rico Human Administration and Transformation Act,” Act No. 8-2017, February 4, 2017, as amended.} Additionally, the implementation of this law did not properly recognize the effect that the change would have on the informal system and has resulted in a system that has become even more vulnerable to manipulation by external elements, with a multiplicity of actors to be negotiated with.\footnote{See for example, Viridiana Ríos (2013) on the dramatic effects on the rise of violence that decentralization of certain functions in the Mexican federal government had due to its effect on the previously stable relationship between the formal and informal systems. See also Strach, Sullivan and Pérez-Chiqués, 2015, on the differential effects on policy implementation of ordered, stable relationships between formal and informal governing systems (e.g. corruptions) versus the effects of unstable, disorganized, relationships between formal and informal governing systems.}

\textit{b. Intersections Between the Formal and Informal Systems}

These political groups work closely with political appointees within agencies and with human resources offices. As one interviewee explained, “The human resources office is the vital base of that structure... to be able to favor the people of their party. There, personnel files are studied... the political groups deliver resumes to them...”\footnote{Career employee.} It is important to note that Human Resources Director positions are usually high-level political appointments within agencies and
municipalities, so they officially respond to political considerations. HR Directors (and other HR officials), along with agency heads and mayors feature prominently among defendants. In over 20% of the cases the Human Resources Director is among the defendants, but this might be an underestimate given that in 26% of the cases it was unclear who exactly the defendants were—these cases included Jane and John Does as defendants or did not specify the official position of all the named defendants. The percentage of HR Directors or officers might be an underestimate—would the systematic manipulation of a highly regulated merit system be possible without the active involvement of the HR department? As expressed by a group of plaintiffs:

Plaintiffs feel compelled to note at this juncture their presence about the scheme which likely lies in lurk if human resources directors who, as stated before, are often the actual designers of the municipality’s personnel policies, are let go away with impunity at the early stages of fray or otherwise fraught with a strong politically discriminatory impression. In that case, the buck is likely to be passed subsequently from the mayor to the then immune human resources director, and both might end up having their cake and eating it too at the expense of innocent people’s constitutional rights. Accordingly, plaintiffs submit to this Court that, at early stages of civil rights litigation based on political discrimination, a mayor and his/her human resources director should walk in tandem, unless exigent circumstances not present here dictate otherwise. 294

The HR office as well as other administration offices (finance, budgeting) are considered among the areas with more power within agencies— as explained by a former political appointee:

…the people that can make personnel transactions, the people that can move money from accounts… that have power because they have the know-how, I mean, not necessarily because they are competent, but because they have the information, information about their bosses, information about how the money is moved and used… people that have that information are very dangerous, to both sides. Dangerous to those in power because they know how to benefit and how to harm you, and for the others, because they have information. I think those are the two most neuralgic areas of the inferior layers of trust employees… human resources and finance, they are the most powerful people, the people that have the most information, and it depends how set on your values you are, and how willing you are to participate in immoral things [like?] like moving money among accounts, like hiring people that do not meet the requisites, like giving raises to people,

but not to those that deserve them; give merit increases in salary (“pasos por mérito”), reinstatements with raises, that type of thing. But other cases show the involvement of the HR office—under orders from the executive agency head—conducting file audits to identify employees from the opposition, and in at least one case the HR director is also the director of the political group in the agency and was in charge of making “black lists” of employees, which I will address in more detail in Chapter 4. These lists constitute a vehicle through which political discrimination occurs; they are tools of the informal patronage system.

Different unofficial lists were mentioned by interviewees, (1) lists of people recommended by community leaders (“líderes de barrio”), mayors, legislators for government positions; (2) lists of people within the agency that donate to the party, that participate in party activities, that are bona fide voters for the party. The party might directly call on public employees to do political work for them, such as selling tickets for party activities, polling (asking how the governor is doing), or calling people to get them to vote on party primaries, additionally these employees are to be favored or protected; (3) lists of people to be considered for political appointments or other desirable positions—the organization members go around the agency polling their party members—"who do you recommend for x position?" And assemble a list that is then vetted and taken to decision-makers for their consideration (or to legislators or the party, for them to give to decision-makers); and what some interviewees and in some political discrimination cases were referred to as (4) “black lists” or lists of political opponents or people that have fallen out of favor with the group.

295 Political appointee / contractor.
A political operative and career employee explained, “the President (of the agency political group) appoints a person in the agency to maintain the list, to identify who is who, pro-Commonwealth or pro-Statehood, in the entire agency. [What is the list used for?] To ask them for money, to ask them to sell tickets... [What if they say no?] Then they cannot come asking for help later [what type of help?] help like getting a job for a family member, or someone that they know, that type of thing.” For example, a career employee narrated how when she resisted working for the party during work hours, the party members blackballed her—would not look at her or speak to her, and when a family member went for an interview, she felt it had damaged her chances (during the interview, her family member was directly asked about their familial relationship).

In another case involving the HR Director, as part of the case exhibits there was a list titled “Affected Affiliates,” that was sent from the agency head to the HR Director. The purpose was allegedly for the HR Director to alter the seniority of party affiliates so that these employees would not be affected by government-wide lay-offs. To an outsiders’ eyes (or in the court’s perspective, as seen above), the list is virtually indistinguishable from an official personnel list, and would have probably passed as such if there had not been a clear paper trail: the list came from the political party, was given to the agency head, and the agency head emailed it to the HR Director. Although the agency head admitted in his deposition that the party gave him the list, he maintained that he didn’t know what the list was for and that he did not remember emailing the list to the HR Director.297

Q Okay. Now, do you recall sending this e-mail to Rosemary? [HR Director]
A I remember having receiving (sic.) it from the party.
Q Okay. And do you recall forwarding that list from the party to Rosemary O’Connell?

297 O’Connell vs. Marrero Recio, CASE 3:10-CV-01971-MEL, Document 89-2, Filed 05/03/12.
A No.
Q Do you recall having any conversation with O’Connell about this list?
A No. I do remember having seen the list at that time.
Q Is that the only thing that you remember about this list?
A Yes.
Q Who from the PNP party sent you this list?
A It could’ve been any liaison from the party for the review of seniority. But a specific person, I don’t… It could’ve been the political coordinator of the agency who gave it to me.

…

A I know that this information came from there.
Q And when you say there you refer to?
A The New Progressive Party.
Q Okay. And was there any instruction that you remembered when you received this list?
A I don’t recall. I know I received it, but I don’t recall.298

The list (Figure V.) includes employees that entered public service from the mid-1970s to 2007. Consistent with hiring practices introduced in this chapter, and that will be further discussed in Chapter 3: 88.9% (56/63) of PNP (pro-statehood) affiliates in the list were hired during PNP administrations, while only 11% (7/63) were hired during PPD (pro-commonwealth) administrations.

Figure V. Example of List, “Affected Affiliates.”

O’Connell vs. Marrero Recio, CASE 3:10-CV-01971-MEL, Document 89-2, Filed 05/03/12.
The official HR roster is also used for political purposes: as a way of determining a person’s political mark (sello), and also as a planning tool for preparing for a change in administration, as narrated by an HR official:

I got along with people in both groups—one of those persons approaches me, ‘I need your help, can we meet in person.’ … she was a supervisor, not a trust employee. I thought the meeting was to organize something related to her division. When I get there, she was with some other employees and she had the HR roster of the agency, of all the positions in the agency… they were planning how to divide positions once there was a change in government… I saw how much influence they had over the appointing authority.

Although the agency roster is supposed to be accessible only to certain employees in agencies, given that it contains confidential information, these employees from a political group had access to it. Interviewees frequently commented on the lack of confidentiality regarding personnel processes and also of the suspect use of personnel files by individuals (not necessarily agency employees) that have no official access to the files nor official personnel-related functions, as an HR official expressed “I didn’t understand why they were using personnel files when there were

300 Interview identifier redacted. Appointing authority or “autoridad nominadora” refers to executive heads of government agencies with the legal authority to make appointments for positions in the Government of Puerto Rico.
no personnel transactions. What did they want them for? What were they looking for?”

HR appears sometimes as the hub where the formal and informal systems coordinate and work together: official lists are used for unofficial purposes; the official civil service structures are manipulated in service of the unofficial patronage system; unofficial groups and actors influence personnel processes; the power structure does not necessarily correspond to the organizational hierarchy, they bend to the unofficial political hierarchies operating within and outside. As described in a particular case, agencies can adopt “a policy of political discrimination.” As a career employee and former political appointee said referring to these dynamics and to the informal networks, “this is the way the system is organized, I cannot say that this is minimal. The government is built on this.”

In the next section I introduce some of the key concepts that are addressed throughout the chapters and that are crucial for understanding how the informal patronage system works, how the formal and informal personnel systems coexist and interact, and how the formal merit system is used for patronage purposes.

c. Concepts

“Confianza”—politically-based trust—emerged as highly important in the fieldwork, it was a repetitive theme in the interviews as well as in the political discrimination cases and was central to both positive and negative personnel actions. Within the in-group, confianza is something that can be adjusted (increased or decreased), or even withdrawn, if the person fails to comply with the expectations that politically-based trust entail.

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301 Career employee.
303 Career employee / political appointee.
In this setting, “confianza,” or politically-based trust carries privileges, that might be subtle, such as increased access to conversations, persons, meetings, documents—but that can make for a very different day-to-day experience in the workplace. It is this sentiment of being trusted that changes, sometimes drastically, when one moves from an insider to an outsider status, from being trusted to being distrusted—in recounting her experience of being politically discriminated, an interviewee described initially feeling as if an order of distrust had been given against her. Understanding “confianza” and how it plays out in the workplace and became connected to political affiliation is key to understanding the patronage experience in Puerto Rico—in order to understand what is taken away and what is gained as employees cycle between insider and outsider status, and to understand how employees become bound by both trust and distrust. In the informal patronage system, political affiliation is being used as an initial screening for distinguishing among those who are trustworthy and those who are not, in hiring and other personnel decisions.304

The role of “confianza,” “the trust and loyalty based on personal acquaintance which ideally exists between superiors and subordinates within an organization,”305 has been studied as an important component of the political and professional networks of the Mexican bureaucratic-elite, specifically for entry into the bureaucracy, and for career advancement. Different from Grindle’s study, this study not only addresses the role of “confianza”, but also of “desconfianza” (distrust), in a highly contested political system (different from the one-party rule in Mexico at the time of Grindle’s study).

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305 Grindle, “Patrons and Clients in the Bureaucracy: Career Networks in Mexico.”
“Palas” and Letters of Recommendation—To enter public service, politically-based trust, often an informal requirement, is established in a number of ways: through “palas” or politically-connected acquaintances, friends or family members, that can vouch for a person’s trustworthiness. Mirroring the processes carried out in merit-based environments, there are letters of recommendations, but these are political letters of recommendation. The use of political letters of recommendations is a way of side-stepping the prohibition on eliciting information concerning the political affiliation of job applicants in the public sector. These letters of recommendation are not generally kept in personnel files but are informally used in personnel processes.

Another concept that mirrors the formal recruitment processes is that of verifying qualifications (“chequiar”), but instead of certifying professional qualifications, or in addition to certifying professional qualifications, political qualifications are verified by searching party lists (is the person a bona-fide member of the political party), lists of donations to the party or party politicians, and by “calling around.”

During their incumbency, as well as before general elections, insiders attempt to hire and then to leave party-members in career positions; positions that afford more protection against being fired than transitory or irregular positions. Employees refer to positions as “having a first and a last name,” in these cases, competitive personnel selection processes (including interview of candidates, tests) take place pro forma in order to hire a particular person. The tools of the formal system are used, but merit is not the driving principle and sometimes is not even taken into account. Additionally, and particularly before elections, processes referred to as screwing-in (“atornillar”) or accommodating/placing (“acomodar”) employees, are common. These personnel actions can be done using the formal, legal processes: by blanketing-in employees through
legislation, through the conversion of trust positions to career positions, or by going through all
the necessary formal rigors in order to appoint, seemingly legally, an employee in a career
position ("has a first name and a last name"). Screwing-in can also be done without regard to
maintaining any semblance of legality in the process, for example, naming during hiring
moratoriums or hiring individuals that clearly do not meet the minimum qualifications for the
position they are hired for.

Politically-based distrust—which often drives political discrimination actions—is
partially determined by "el sello" or "the mark" of one’s political affiliation. Employees that
were appointed during the incumbency of a specific political party will be marked or "stamped"
as being a member of that political party—date of entry or positive personnel actions are used as
proxies for political affiliation. After a change in political administration, the in-coming
administration generally conducts personnel file audits, which although a formal process of the
merit system, is used to identify employees of the opposition.

Date of entry into the system as well as dates of promotion or positive personnel actions
are used to make assumptions regarding the political affiliation of employees. There can be
firings or agency reorganizations, to rid the agency from employees of the opposition. The
processes used are usually the formal processes. For example, file audits in which irregularities
in personnel processes are detected, which are then used as a justification to fire, demote or
transfer. Or agency reorganizations undertaken under the guise of “service needs.” As an
interviewee explained, “services are dismantled, but more than decisions responding to
programmatic needs, what weighted most in these restructuring decisions was the partisan view
of protecting some people and dismantling others… I have seen how they’ve physically
dismantled programs, dismantled offices, knocked down walls… it’s crushing…‘I am in power
and I do as I want’… they crush people, a lot of abuse.” There are other mechanisms such as marginalizing, harassing or constructive dismissals that always fall outside the formal processes, and that target individuals (or groups) that are not trusted, but that cannot be fired.

When there is another change in political administration and individuals and groups go from the outsider to the insider status, “revancha” (rematch or desire for revenge), are characteristic specially after highly political administrations. Both requests for negative actions against now outsiders (“revancha”) as well as for benefits to now insiders are characteristic of this phase of the cycle. When requests for either negative actions against outsiders or beneficial actions towards insiders are met, these are usually met through the mechanisms detailed above. Employees transitioning to an insider status after living through the outsider status, will want different things than when they initially entered public service and had not been socialized to the organizational culture.

4. Conclusion

This chapter discussed the literature, detailed the methodology and the conceptual framework for this dissertation as well as introduced some of the features of the informal patronage system that will be discussed throughout the dissertation. The chapters that follow are structured along the insider-outsider cycle described in this chapter and feature the actors and tools that were introduced in this chapter.

The next chapter, “Becoming insiders,” describes the first phase of the model: how people enter into the system and how political affiliation is used systematically, but informally, in personnel decisions and personnel management.

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306 Career employee / political appointee.
Chapter 3.

Becoming an Insider: Entry into Puerto Rico’s Informal Patronage System

This chapter describes the initial experience/phase of the model, the experience of entry into government employment, or what I call becoming an insider. This chapter addresses how political affiliation is systematically used as an informal qualification for entry into public employment from both the perspectives of people entering the public sector and decision-makers. It shows the experience of employees as they are confronted with the pressures of highly politicized environments. Entry into the system is an extremely important phase in the model, given that the date and the circumstances of employment have an effect in how employees are perceived in terms of their political affiliation. This perception, in turn, influences subsequent career trajectories. Additionally, understanding the insider status is necessary for a fuller understanding of the subtleties involved in the transition to outsider status—without the contrast, the subtleties of the experienced loss might not be as evident.

This chapter shows some of the rationalizations that sustain the system, some of the mechanisms used to determine political affiliation of employees (e.g. political surveillance, use of informal lists), and further discusses the actors that facilitate political discrimination (e.g. political operatives, political groups within agencies). Some of the concepts that I address in this chapter and that are relevant to entry into the public sector are: “confianza” or trust that is based
on real or assumed political affiliation and that is an important criterion in hiring decisions and personnel management; the use of “palas” or politically-connected acquaintances (including family members) and use of letters of recommendation based on political rather than professional qualifications; and practices such as verification of political qualifications and how this is done. This chapter also addresses how these concepts play out in the context of a merit-based civil service system, including how HR hiring processes are often used a posteriori, in order to hire predetermined persons (“that position has a first and a last name”). This chapter addresses the actors who have power or influence over appointments and the pressures that decision-makers face regarding the expectations and pressures to hire within party lines.

In a merit-based system, entry into career public personnel systems are formally dictated by rules and regulations that are in place with the goal of having the most qualified individuals entering government work. Merit systems are supposed to rest on the principles of competitive examinations, political neutrality, and the expectation of tenure after meeting a probationary period. Unlike in patronage systems where public officials respond to the party or to a patron, in merit-based systems officials are expected to respond to the state. The public administration literature focuses on merit and on professionalizing the public workforce, and when the literature addresses patronage, a merit-based civil service is proposed as a reform. Civil-service reform is supposed to create a merit-based system, but this is often not achieved in many places, such as in the Commonwealth of Puerto Rico.

Entry into Puerto Rico’s public service system is widely thought to be based on political

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308 “Reformers of all stripes promote civil service reform as a tonic for corruption, nepotism, favoritism, partisanship, spoils, incompetence, lack of professionalism, inequity, capture, particularism, mediocrity, malfeasance, and electoral fraud and violence. In contrast, career civil services are thought to bring professionalism, merit, neutrality, uniformity, rule-orientation, competence, autonomy, predictability, and continuity to government. Indeed, patronage in the public service has no friends—aside, of course, from the politicians who provide jobs for “their people” and those who are favored with these appointments” (Grindle, 19.)
affiliation, and personal or political connections. As a former high-level official expressed, “there are very few people entering (public service) if not through politics.” How does a patronage system work within a highly structured merit-based civil service system? It works through the strategic use of the merit system tools, or the simultaneous use of the tools of both the formal merit system and informal patronage system (e.g. CV and political letters of recommendation; formal list/registry of job candidates and informal list of candidates’ political affiliation). There is a dual system of personnel management that sometimes operates as one, with such seamlessness, that many times it is impossible to distinguish or recognize.

In this system, the rules of the game appear to be objective, but the manipulation and strategic use of the formal rules and procedures in place allow the formal system to respond to the needs of the informal patronage system. It appears that individuals competed based on merit because the required processes were complied with—job candidates submitted an application, interviewed, took the required tests—but, when their political affiliation (and personal connections), sometimes unbeknownst to them, are informally, but systematically considered in hiring decisions and other personnel actions—when the official rules and procedures are rigged to favor party-loyalists or politically-connected individuals—the resulting system might be as capricious as a patronage one.

Because of long-standing discriminatory practices in personnel recruitment and management, date of entry into the system and changes in salary are frequently used as proxies for determining employee’s political affiliation. This chapter, “Becoming an Insider,” describes

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309 Career employee / political appointee.
the initial phase of the informal patronage system: how political affiliation is systematically used as an informal qualification for entry into public employment.

1. **Entry into the career system or “that position already has a first and a last name”**

   Although entry into the career system is protected by federal and state laws, merit criteria are not the determining factor for who receives a position. Nonetheless, it is difficult to prove that there was political discrimination in hiring processes because oftentimes the merit system’s processes are used and carried out seemingly without manipulation. It seems that employees competed. An employee goes through the interview process or takes a test and might not even realize that he or she was chosen based on their political qualifications or connections. The 50 randomly selected political discrimination cases involved either political harassment, demotions, transfers or politically-motivated firings, none in the sample were about entry into the system (none challenged being hired on political grounds), signaling that it is harder to detect and challenge political discrimination or favoritism in hiring decisions. Nonetheless, even for career positions within state agencies, which are more professionalized and have stronger merit systems that public corporations or municipal governments, the use of political qualifications in hiring decisions was pervasive, and hiring within party lines was the norm, “I have never seen it done differently,” explained a career employee with over thirty years of experience.

   **But how do decision-makers know who ought to be favored?** The informal patronage system rests on the ability to be able to distinguish between insiders and outsiders. The data suggest that there are multiple informal mechanisms for determining political affiliation—“palas” or politically-connected acquaintances, political letters of recommendation, verification.

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311 “Ese puesto tiene nombre y apellido” - expression repeatedly used by formal and informal interviewees.
312 Cordero-Nieves, “Consideraciones Sobre Los Posibles Efectos de La Descentralización en La Administración del Servicio Público: El Caso de Las Regiones Autónomas en Puerto Rico.”
of political qualifications, the “stamp” or political mark, date of entry into the system or of raises, unofficial lists of employees’ political affiliation— and that power over appointments in the career service is not nearly as straightforward as an agency’s organizational chart would suggest.

Power does not necessarily correspond to the formal power structure or official title, instead there is a robust informal structure that wields power through the formal government structures. There are numerous actors involved in the process, from legislators, political groups within agencies, as well as outside influences, such as big party donors. And plaintiffs in political discrimination cases seem, many times, to be unaware of or unable to prove these influences.

All of the interviewees familiarized/or that directly worked with human resources processes or personnel recruitment expressed that in all their years in government, they had rarely seen anyone hired or promoted outside party lines, or that they themselves had rarely hired or promoted outside party lines— and referred to this as “modus operandi,” as “our daily bread,” and as “law.” In their view, “there are very few people entering (public service) if not through politics.” What are HR processes actually used for? Not to uphold merit, nor are they driven by service needs. The evidence suggests that they are used to enforce the informal patronage system— to award both benefits and punishment. Every transaction responds to political considerations, but always couched in what this HR official called "magic terms," such as

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314 For example, in a 2016 corruption case (U.S. v. Hernández-Pérez, Criminal No. 15-739 (PAD), United States District Court, D. Puerto Rico), a notable political fundraiser and businessman was implicated in both the hiring and firing of government employees based on political considerations.
“service needs” ("necesidad de servicio"). This chapter shows some of the rationalizations that sustain the system and some of the mechanisms used to determine political affiliation of employees.

The next section addresses the pervasive use of personal or political connections, or “palas” to gain entry into public service.

2. Reliance on “palas” or personal or political connections

Even though interviewees would say that they were hired because of their merits, most were or ended up joining the political party that hired them, were initially referred to a government job by a person that was politically connected or had family members that were connected to the party in power at the time of their entry. Twenty-one out of twenty-three interviewees got their government jobs through personal or political connections (“palas”\(^{315}\)) or someone else’s “palas” – their mother’s, their uncle’s, their son’s, their aunt’s, their friend’s, their neighbor’s. The candor with which people speak about their palas (ex. “I have one in x,” “the pala was not good enough”) or ask about others’ palas (“do you have a pala in x or y?”), is indicative of how personal connections make it easier to get a job, a contract, navigate through a government bureaucracy, or get a public benefit. As the popular saying goes, “if you have a godfather, you’ll get baptized.”\(^{316}\) Only two interviewees went to interviews without these “palas” (shovels), and both did so during the 1980s, as one of the interviewees explained, during that time “there was politics, but also merit.”

The importance of “palas” was evident in interviews, court cases, and day to day interactions while in the field. An electrician, interested in a job in the Puerto Rico Electric Power Authority (PREPA), one of the state's corporations, saying how only the sons of the Governor or of

\(^{315}\) Literally translates to “shovel.” Similar in meaning to Mexican “palanca.”

\(^{316}\) “El que tiene padrino se bautiza.”
politicians are able to get jobs there, (even though formally, it is a competitive process). He had a "pala" (someone that could help him, that has some influence), but it is not a good enough "pala." For entry into agencies or public corporations with the best salaries and benefits, like the PREPA, “you don’t need a “pala” (shovel”), you need a digger!”

All interviewees narrated that recruitment processes were influenced by referrals from mayors, referrals from La Fortaleza (Governor’s Office), and from the party’s base, for people that marched with politicians, “quemó tenis” (burned the soles of their tennis shoes walking) in political caravans, that “pasquinó” (pasted flyers/posters for candidates), that collected or donated money to the party, or that were otherwise politically connected. A 2009 survey of 156 randomly selected public employees, from 28 state agencies in Puerto Rico confirms these views. The survey found that irregularities in personnel management is considered one of the most common forms of corruption, second only to government contracting: 60 percent of survey respondents agreed or strongly agreed with the statement that many or almost all managerial employees and administrative employees obtained their positions based on political connections, while 55 percent agreed or strongly agreed with the statement that administrative employees in their agency obtained their positions based on their political connections. When asked about the basis of personnel related decisions (recruitment, promotions, salary increases): 43.6 percent agreed or strongly agreed with the statement that decisions had been based on political connections/affiliation, and 37.2 percent agreed or strongly agreed that decisions had been based on friendship. Additionally, 15.4 percent agreed or strongly agreed that “Positions were assigned because of bribes”; 41.5 agreed or strongly agreed that “Positions were assigned based

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317 Career employee.
319 Ibid.
on changes in agency administration”; while 42.6 percent agreed or strongly agreed that “Positions were assigned based on performance, experience and merit.”\textsuperscript{320} The findings of this survey are consistent with the perception and experience of interviewees as well as with the evidence in court cases regarding the dual consideration of both political and professional qualifications in government personnel processes, or simply the political qualifications personal connections.

The normalization of the manipulation of personnel processes evidenced in the data, made it difficult for interviewees (and even myself) to be able to distinguish between what were acceptable practices and what constituted violations of law. As a defendant in a political corruption case\textsuperscript{321} expressed regarding the normalcy of partisan political pressures in the bureaucracy, she spoke “…of the politicking that corrodes the public service, of how this bad habit becomes part of the day to day of government. ‘It’s normal, it’s completely normal,’ she says about partisan political pressures.”\textsuperscript{322}

These practices are not new. A 1987 letter from a District Senator to all agency heads—including the Director of the Civil Service Commission, which is the state instrument that investigates political discrimination!—requesting a list of all agency employees that reside in her Senatorial District, illustrates what interviewees described:

In many occasions we have received complaints from our ward leaders that people are being appointed without consulting with them. I suggest, that in order to keep ourselves (in power) many more years, that every person that applies for a job in your agencies be recommendable by their legislator and ward leaders, that they come to our offices to get their recommendation letters. … It is maddening how our district ward leaders, who carry the daily fight and struggle to uphold our party, inform me daily that appointments of people that are not of the Party have been made.\textsuperscript{323}

\textsuperscript{320} Ibid.
\textsuperscript{321} The former ex-director of Purchasing in a government corporation.
\textsuperscript{322} Cynthia López Cabán, reporting on corruption case--U.S. v. Hernández-Pérez, Criminal No. 15-739 (PAD)--Twitter, February 9, 2017.
\textsuperscript{323} PRCRC, “Informe Sobre Discrimen Político en el Empleo Público en Puerto Rico,” 16.
Although the letter is dated (over 3 decades), it accurately captures what interviewees experienced. For example, a career employee who wanted to compete for a supervisory position within her agency was urged by her colleagues to “get a letter,” “but it was not a letter from just anyone in the party,” she explained, “it had to be from someone up high.”324 She competed, but was acutely aware that it was a rigged process in favor of an individual with better political qualifications, that the position “already had a name and a last name” (“tiene nombre y apellido”). This phrase was often used by interviewees when talking about career positions that were awarded to someone unofficially before carrying out the required civil service processes—it was a sham of a process, in which other candidates were interviewed although the decision was made beforehand or the formal process was carried out in order to hire a specific person. This same interviewee had previously held political appointments in other agencies, and participated in personnel recruitment processes, she explained how, “the (hiring) panel, everything.... was fake. The people they chose were the friends of x, the referrals of mayor y... they already had the people they were going to select. It’s very “in your face.” They have no qualms about it.”325

Interviewees all agreed that public service had become more politicized and that these practices continue, but that now people were more “careful,” for example, by not keeping copies of political recommendation letters in employee files, which could then be used as evidence to impugn personnel decisions, and, more importantly, through the pro-forma or strategic use of personnel processes.

The reliance on personal connections to gain entry into public service sometimes results in people with the wrong political affiliation coming into the administration of the opposition,

324 Career employee / political appointee.
325 Career employee / political appointee.
and this situation brings its own set of complications, given the expectation that hires will be made within-party. Nonetheless, personal connections are not necessarily based on political affiliation—they can be, but there are many other factors—where people studied, family members, neighbors, church members, among others. Three of the interviewees gained entry into public service when a party that they were not affiliated with was in power—these employees had to actively and strategically manage their perceived political identity in order to enter government.

The first, a highly qualified young man, unable to get a public-sector job during the 1970s even though he had excellent academic credentials. He did not understand why he was never selected for the jobs-- he applied to so many government jobs and got among the highest grades in the examinations. After two years of actively searching, frustrated, he went to consult a policeman in his town, a friend, who explained why he had been unable to get a government job: “what happens is that you have political ideals, you talk about them, you identify yourself… If you would only remain quiet… the Intelligence Division of the Police Department comes around asking for information…” The information collected by the Intelligence Division was then given to decision-makers in government agencies. These were common practices at the time for monitoring nationalist and pro-independence adherents.

The interviewee then went to meet with a municipal party leader (affiliated with the party in power), who was also a personal acquaintance. After explaining the situation, the party leader replied “Ay bendito, it’s that we investigate because we want to give permanent employment to

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326 Career employee / political appointee / contractor.
327 The involvement of the police in political surveillance of pro-nationalist and pro-independence individuals during the 1940s-1980s is well-documented (see, for example, PRCRC, “Informe Discrimen y Persecución por Razones Políticas: La Práctica Gubernamental de Mantener Listas, Ficheros y Expedientes de Ciudadanos por Razón de su Ideología Política.”)
“ours”...we have to place people that, after the end of the administration, will respond to the party.” The party leader, who had “watched him grow up,” agreed to give him a verbal recommendation, and he was able to obtain his first government job. The interviewee explained the importance of recommendations from political leaders or political powerful individuals for securing government employment-- “it is important to take a letter with you,” the mayor’s, the representative’s, “because it is government.” Even though his political affiliation did not match with that of the administration in power at the time of his entry, he was “stamped” as a member of the pro-statehood party. Even though he is ideologically identified with a party that has never been in power, the pro-independence party, this interviewee has the mark of the pro-statehood party, and his professional life has thereafter been marked by 4-year to 8-year periods of employment (employed but marginalized), or unemployment depending on whether his stamp (not his own party affiliation) matches the administration in power.

Another interviewee was able to get a public post through a politically-connected friend who worked in a government agency. The interviewee was from the main opposition party but considered political affiliation to be a private matter, as it was in her previous private sector employments--- “I didn’t know anything about politics… my friend told me ‘do not open your mouth, you shut your mouth up, don’t say anything,’” lest someone find out about her real political affiliation. She explained the frustration she felt trying to clear-up the assumptions made about her political affiliation after a change in administration-- “they don’t know how to differentiate,” if you are perceived to collaborate or work while the opposition party is in power, you are distrusted by your partisans because you are expected, by the informal system, to

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328 This was also common in within-party political discrimination cases, where plaintiffs were discriminated against because they had not proved themselves partisan enough (e.g. O'Connell v. Marrero-Recio, et al., 724 F.3d (1st Cir. 2013); Rojas-Velazquez v. Figueroa-Sancha, 676 F.3d 206, 208 (1st Cir. 2012); Mercado-Berrios v. Cancel-Alegria, 611 F.3d 18 (2010)).
underperform (or at least not work energetically, not beyond what is strictly necessary). She had to prove herself, go to political activities, donate money to the party-- “I felt forced to…. one feels that pressure…”329

A third career employee with over thirty years of experience, was able to get her first government job by lying about her political affiliation. During the process of recruitment, the agency director called her to ask about her political affiliation (this was for a career position, direct service). She lied— “what is one to do? I have a family”330… later, when her political identity was revealed (she was spotted working in a political activity for the opposition party)— there was a backlash, people stopped talking to her, would not even look at her, but she kept her job. Unlike the interviewee in the first story—who remained with a political mark that did not match his real identity331--this employee was eventually able to prove her loyalty to the party she actually militated for, and thereafter, and similar to interviewees who entered when their political party was in power, rose when her party was in power, and was stalled (career-wise) when her party was out of power.

These three stories illustrate that even though “palas” are important for entry into public employment, ultimately, political affiliation is more important, because, after entry into public service, public employees are managed politically, and how they will ultimately be defined will be the result of how they react to the different requests from and expectations of the informal system. Additionally, these examples show some of the complications with one’s own party that arise out of the mismatch of entering when the opposition party is in power or being benefitted

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329 Career employee.
330 Career employee.
331 This employee with a political party that has never been in power nor close to being in power (pro-independence party). It is common for employees of the pro-independence party to align themselves work-wise with one of the two main parties—pro-independence supporters and party members that vote and work for the pro-commonwealth party are called “melones” (melons), because they are green on the outside (color of pro-independence party) and red in the inside (color of pro-commonwealth party).
when the opposition party is in power. As expressed by the appellate judges in a within-party political discrimination case:

We have observed before that “irony is no stranger to the law.”... In yet another example of this verity, the appellant's career path became rocky when his own party, the NPP, won the 2008 general election and regained control of the government. At that point, some departmental hierarchs began openly questioning his fealty to the NPP in light of his promotion to Commander during the previous PDP administration.\(^{332}\)

In the case of the interviewee that was from a party that was never in power (pro-independence), his real political identity was not revealed and his career trajectory followed the insider or outsider status of the party that initially hired him. While the interviewees who were bona-fide members of the main opposition party, gravitated towards and proved themselves loyal to their “real” party and thereafter their career trajectory followed the insider or outsider status of their party.

Although the political mark or stamp (“sello”), often based on the date of entry into public service and tends to stick, it is a long-term game. As another interviewee explained, “in the long run, you always know... they give themselves up (disclose their political identification) in conversations, by actions....”\(^{333}\)

3. **“You are forced to identify yourself”**

Some interviewees narrated, how, upon their entry into the system, they would be told openly by party operatives in the agencies, “we know who you voted for,” or “we know how you got here,” or, alternatively, would be questioned by party operatives, their peers, about their political qualifications for being hired. One of the interviewees, a clerical worker, described the tension she felt regarding the scrutiny of her political affiliation when she entered public service. Another employee told her “they checked you,” referring to finding out who she voted for. She

\(^{332}\) Rojas-Velazquez v. Figueroa-Sancha, 676 F.3d 206, 208 (1st Cir. 2012).

\(^{333}\) Career employee.
tried to calm herself thinking that it was impossible that they had really checked, “the hiring process was too quick, there was really no opportunity for them to verify...my God, it is something so private. ... they say it so much in TV! You go into a place, you are covered, all that... so why? Why did I have that anxiety? ... I did not give importance to that (referring to political affiliation), I didn’t care who was who...” From then on, she would even practice what to say and how to say it so that people would not be able to figure out her political affiliation. She felt that identifying herself politically might harm her in the future; she didn't want the political "stamp." This politicized environment made her feel very vulnerable, she needed to work to live, and protecting her political affiliation required a lot of energy. She is one of two interviewees that actively and continuously resisted being labeled or “stamped” with a political party affiliation. The other, a highly qualified specialist, recalled her peers’ comments when she was hired, “your husband must be well-connected,” and how this scrutiny of her and her family’s political preferences shocked her.

But staying neutral is hard, and, what’s more, detrimental to one’s career. After thirty years in the agency, even this politically-neutral specialist believed that she had not been able to get a higher position in the agency because she remained politically neutral, and spoke about the vulnerability she, and other neutral employees felt, with each change in administration. Because of her level of expertise and professionalism, her colleagues wanted her to be considered for a higher-level career position. When one of them brought this suggestion to their boss (a political appointee), the boss’s response was, “who can give me the guarantee that she is “popular”?!” (the party in power at the time). They couldn’t. No one could, for she had carefully maintained political neutrality throughout the years. Remembering this, she stated “you have to gamble your

334 Career employee. She was taken to the interview by a person (from the political party in power) that knew a family member and that had been recruiting in her community, a public housing complex.
career on one party, and hope that by doing so you will be able to rise professionally.”

Interviewees described the environment in government agencies as highly complex in terms of interpersonal relations given the frequent changes in political administration in the Executive branch. This politicized environment in agencies and corporations was described as contrasting to working in more politically-stable environments—such as Municipalities which underwent changes in political administration less frequently (and sometimes had the same political administration in power for decades). It was also contrasted with agencies in which there was “no conflict” because employees were all or mostly from the same political party—such as agencies established during specific administrations; or agencies in which agency heads were appointed for 10-year terms.

Working in politicized environments was described as akin to walking in a minefield, "you cannot give this much responsibility to that employee, not of trust," "you have to isolate that employee," "you have to hire this person, he’s one of ours," "you cannot talk to this employee," "you have been talking too much to this employee," "you cannot collaborate with your boss," "you cannot ‘touch’ this person," pressure comes from above, from below, and sideways, paralyzing and making invisible people that are actually qualified to do the work.

4. Political Qualifications and Politically-based Trust (Confianza)

The appearance of legality and the emphasis on process was something discussed in both interviews and court cases. In contrast to trust positions and to transitory or irregular employees, hiring for career positions is the most restrictive. Recruitment for career positions goes through a formal process that includes considering people who are in an official list—the Registry of

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335 Career employee.
Eligibles—who qualify for the position. Potential candidates have to be selected from this official list, as a former HR Director explained, “a person who has not filled an application to enter into the registry cannot enter government,” and then she added, “until that step, everything appears very impartial.” Decision-makers recruiting for career positions are required to consider candidates who are in the agency’s Registry of Eligibles. Usually, the official list will include candidates from different political parties, who are competing for the position. But how do decision makers know who to favor?

There is an informal information system. When recruitments are going to take place, “everyone finds out, it is like a 911 alert, an orange alert, a red alert, “we are going to be hiring in San Juan...” everyone finds out, the party finds out, the municipality finds out, who is in that “décima” (list of ten job candidates from the Registry of Eligibles that quality for the position)? And then a process of investigation begins, “who’s who”, who knows you, where are you coming from... and they are going to find out.” In this case, the formal Registry of Eligibles is used as formally prescribed by the merit system rules. Nonetheless, the political qualifications of those in the list are integrated into the selection process unofficially to respond to the informal system’s rules (e.g. is the job candidate a known supporter of the party? Does the job candidate’s family militate for the party?). This dual consideration of political and professional qualifications is considered by interviewees with direct knowledge of (or participation in) personnel processes as "standard operating procedure." In some agencies, the “décima” process is completely circumvented, and party affiliates are appointed to interim positions while they gain the required experience to qualify them for the career position. In this way, they can be appointed to the position, without competing for it. A former HR Director gave some insight in how this informal

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336 Career employee / political appointee.
process works: “Lists of people, con nombre y apellido (with first and last name), to be hired for specific positions would be delivered by party operatives to the Executive Director, who would then send the list to our office. … The lists would include the name, address, contact information, and position for the person.”

From the perspective of employees in decision-making positions, these politically-based personnel decisions have their own set of justifications and expectations—political affiliation is seen as the basis for trust and for increased responsiveness, as explained by a political appointee, “you have to trust the person that works with you.”  

Another political appointee explained that it has been his experience that those of his own party work better for him than those that are not, so he has been recruiting more pro-commonwealth employees (for career appointments), people that have his trust, “they will work for you with more energy,” he explained. But also, the now insiders will be given more responsibilities, increased access to those in political appointments, more exposure, and other perks (e.g. more flexibility with their schedule). More access, exposure, and greater job responsibilities are used, in turn, to justify the raises given to insider employees. As a former political appointee explained, “we have to give them (insiders) raises. [Why?] It wouldn’t be fair not to... We are going to be asking more of them!”

There is a deeply engrained conception that a person’s trustworthiness is based on their political affiliation. From the perspective of employees in decision-making positions—political affiliation is seen as the basis for trust and for increased responsiveness:

My best employee is one that is ‘de confianza’ (of trust) and ‘confiable’ (reliable). By ‘of trust,’ I mean that they militate in my party… that one can talk about everything with them, that they are unconditional to me, that I can rely on them to execute the party’s

337 Political appointee.
338 The importance of trust is captured even in the Spanish term used to refer to “political appointee”— “empleado de confianza” literally translates to “employee of trust.”
339 Political appointee.
340 Career employee / political appointee.
public policy... By “confiable” (reliable), I mean that they get to work on time, that they do not cause problems with other employees. ... I’d rather leave the position unoccupied than hire a person that, although reliable, is not of trust.  

“If you hire someone that is not of your party, they do not owe themselves to anyone,” explained another former political appointee. If you are going to do any type of activity, those of ‘confianza’ will do whatever it is an employee has to do, “…dress as clowns, carry chairs.” While those that are not of trust, “they’ll say ‘it’s not in my job description,’ they’ll get sick, get conjunctivitis, arthritis… it will be obvious that they’re boycotting your work and you will not be able to prove it. … They have rights, but they use them to fuck you over. That’s how this system is set up, that’s how they survive.” As these expressions illustrate, political affiliation is used as a screening mechanism to sort among employees being considered for employment.

Interviewees who were political appointees or had held political appointments justified the (informal) system based on a variety of factors other than trust. Some interviewees attributed these patterns to our nature, “we are human,” “humans are prejudiced.” Other interviewees minimized the problem by favorably comparing Puerto Rico with other places-- “it is worse in Chicago,” “it is worse in the Dominican Republic, everyone is fired when the party changes.” And, importantly, there was also an emphasis, an insistence, that these politically-based personnel decisions were not illegal, maybe “unethical, but not illegal” (*although many actions were in fact illegal*)—that they were legitimate decisions made among equally situated employees,

you are obviously not hiring people that do not qualify, not giving contracts to suppliers that do not meet the requirements... what happens is that there can be someone equally

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341 Career employee / political appointee.
342 Additionally, the term “corruption” did not come up at all when discussing political discrimination, politicking or manipulation of contracting processes—not even once. The only mention to corruption was done referring to another context (embezzlement of federal funds).
competent or qualified that belongs to one party or the other, and, so, people choose based on the party of their preference, ‘that’s it.’\textsuperscript{343}

As a former “popular” political appointee and career employee said, “If I have to choose between an equally qualified ‘penepé’\textsuperscript{344} and ‘popular,’\textsuperscript{345} I will choose the ‘popular.’ Okay?!? But find me a qualified ‘popular’!?!?\textsuperscript{346} And another political appointee and career employee expressed, “every time they send me someone from the opposition party (to recruit), ‘no, I’m sorry.’ If I am going to recruit someone, it has to be one of ‘mine,’ because I’m not going to bring in someone to work with me that is not of my trust.”\textsuperscript{347}

But when it comes to the opposition, the tone changes, these same interviewees talk about what they witnessed when “outsiders,” how the then-insiders appointed people that were mediocre, “batatas políticas,” (“political vegetables”—unqualified, hired solely for their political connections, affiliation or political work)\textsuperscript{348}, how they contracted companies that had not even existed prior to the elections, held sham personnel-selection processes, brought-in and “acomodaron,”\textsuperscript{349} left in career positions, “their people,” “their tribe.”

Although interviewees in decision-making positions recognized the value and desirability of qualified candidates (from their party), they are under a lot of pressure to hire candidates that they deem unqualified, but that have strong political qualifications. As a former political

\textsuperscript{343} Career employee / political appointee.
\textsuperscript{344} Pro-statehood party—New Progressive Party (NPP)—adherents.
\textsuperscript{345} Pro-commonwealth party—Popular Democratic Party (PDP)—adherents.
\textsuperscript{346} Career employee / political appointee.
\textsuperscript{347} Career employee / political appointee.
\textsuperscript{348} Nevertheless, what we are actually confronted with in this case is an all-too familiar figure in Puerto Rico; not the political animal, but the political vegetable. Ortiz, because of his political services, was given a job. ... This patronage position was concocted to accommodate what is known in Puerto Rico as a “batata política”, a political sweet potato. In Puerto Rican parlance a batata política is one who is employed because of his political services and not because of his qualifications. ... For his good and faithful service to the party, he was rewarded by employment in a job that was an illegal creation” (Ortiz v. Torres-Gaztambide, 673 F. Supp. 645, 648 (D.P.R. 1987)).
\textsuperscript{349} Can be translated as “placed”, but the Spanish word connotes an amount of care in placing a person, it is something that people desire—this stands in opposition to the use of the atornillar or screwing-in word, which has a negative connotation.
appointee explained, “it is a way to pay back favors... You have the pressure of the entire system—the Governor, mayors, parties. All reminding you that you have to pay political favors; they have you pay the bill.”

Several interviewees in decision-making positions remembered how when they entered public service they didn’t care “who was who” politically, and how this changed. One of the interviewees remembered how the first time she hired, she didn’t look at political qualifications. She ended up hiring someone from the opposition party, who made her life “impossible.” Expressing her frustration, one of the political activists in her office told her, “Jefa, you have to check these things!” After this experience, she always examined political qualifications before making hiring decisions.

Other decision-makers learned to integrate political affiliation into their personnel (and other) decision-making processes because they were punished for (not) favoring specific individuals, in these cases, “the informal system comes after you.” When a political appointee refused to require her supervisees (career employees) to go to a political activity and make them sign-in when they entered and when they left the activity, she was told, “you know, this is going to be your last day (at work), don’t you?” This was a point of no return for her, “they can keep asking me to stay until 10:30pm at work, but I cannot do that. I have never done it and I don’t know how to do it. They can get everything else from me, my work, my dedication...” Another former political appointee that had resisted the pressure to favor insiders with raises and more

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350 Career employee / political appointee.
351 Career employee / political appointee.
352 Career employee / political appointee. As illustrated in interviews and court cases, the most common repercussion of not complying with informal rules or requests was the withdrawal of trust, which could result in: removal from trust positions, demotions, marginalization, or harassment.
353 Career employee / political appointee / contractor.
favorable treatment, and had thereafter not been able to get higher positions, said quietly, “you
know, I had never said this, but I know that these are my consequences...”

Similarly, other interviewees recounted instances in which they felt compelled by their
superiors to do things that they did not feel comfortable with, but they nonetheless complied
because of fear of reprisals. In an especially striking case, the pro-statehood party put into place
an initiative called the Blue Circle to collect money for the political party through biweekly or
monthly discounts to personal bank accounts or credit cards. This initiative mainly targeted
public servants. As a career employee narrated, “the agency head convened all pro-statehood
employees of the region to a meeting. [how did they know who to convene?] “They have a list.”
[of everyone?] “Everyone-- secretaries, drivers, everyone.” In the meeting, employees were
given forms to fill out for the automatic withdrawal of funds from their accounts as contributions
to the party. “They weren’t holding a gun to our heads. But we all signed... Our hands
trembled.” Employees were afraid of the repercussions of not signing the form. Of not being
promoted during that four-year period or of being punished; not trusted. Ironically, the form that
the employees signed certified that employees did so “freely and voluntarily, without the
intervention of a government employee of higher rank than my own” and that the contribution
had not been requested during working hours or in public property.

A merit-based incentive system, whereby, in principle, the most qualified employees are
supposed to rise through the ranks of an organization, is thwarted in this environment. All
interviewees (and all plaintiffs) perceived their political affiliation was determinant in their

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354 Career employee / political appointee / contractor.
355 As described in a newspaper article, “[e]missaries of the New Progressive Party (PNP) are distributing in
government agencies a registration card for a project known as "Blue Circle" that seeks to raise party funds through
biweekly or monthly discounts to personal bank accounts or credit cards” (“Círculo azul para allegar fondos al
356 Career employee.
career trajectories, although they didn’t necessarily know it when they were hired. The effect of political affiliation in employees’ career trajectories is mirrored in the political discrimination cases which detail the professional ascendance of employees when their party (or perceived party) was in power, and their professional and personal losses when the opposition party came into power.

Additionally, there are other ways in which political affiliation is verified by political operatives within agencies that are not necessarily even known by the employee, such as verification of the party lists of who voted in party primaries, or campaign contributions made by the individual or individual’s family members. If the person does not vote or contribute monetarily to campaigns, political operatives within agencies gather information about the individual and family members’ political affiliation by “calling around” (e.g. Does the job candidate’s family militate for the party?). According to the interviewees, these lists are used: for personnel decisions; for management decisions (who to trust with specific tasks); and to request monetary contributions and political work from public employees. In some instances, employees have been forced by their supervisors to take pictures of their ballot, in order to keep their employment. Some employees even believe that voting is not secret and that there is a way to link the ballots to individual voters. Two interviewees told me details about how it is

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358 But true or not, employees are bullied or pressured over this, made to feel that their vote is not secret. The Comisión Estatal de Elecciones (State Electoral Commission), which is in charge of electoral data (including voter’s data) is officially managed by the political parties, it is a very politicized state instrumentality. The Commission on is headed by a President (appointed by the PR Governor and confirmed by the PR Senate) and three Electoral Commissioners, named by the political parties. The information on campaign contributions were, although public, not publicly available until very recently (2015).

done, another interviewee told me that she knew these groups could find out who individuals
voted for, through connections in the Electoral Commission, but didn’t know how they did it,
they just know... I hear them talking, ‘did you know ‘x person’ changed his vote?’... [but
you think that the vote, that secret vote...] (interrupting) It’s public. [It’s public?] Yes.
Somehow it is public. It’s something that I don’t know how to explain to you, but one
way or the other, that vote becomes public.360

From the data it is impossible to tell whether vote surveillance is possible in the way
interviewees and some plaintiffs believe— what is evidenced is how this possibility is used to
bully and intimidate employees. It could be a perception, a myth, but just the belief that the vote
is not secret is worrisome and might affect how people act and how they vote. In an example of
alleged voting-related surveillance from a political discrimination case:

    Things changed in May 2009 when an NPP primary election pitted O’Connell [HR
    Director] and Marrero’s candidates against each other. When Marrero learned that
    O’Connell stood in a different camp for the election, he prohibited her from campaigning
    in favor of her candidate. Marrero also threatened her by stating that “he did not want to
    learn that she voted in the primaries for *121 [her candidate].” O’Connell voted for her
    candidate anyway, and a few days after the election, Marrero told O’Connell that he knew
    how she had voted and that, from that point on, she was not allowed to engage in any
    “off-office” political activities. Marrero also enlisted some of his subordinates at ARPE
to spy on O’Connell. A clandestine newsletter circulating at ARPE stated that O’Connell
was being videotaped and that she held a parallel private-sector job. O’Connell later
learned that a subordinate of Marrero was responsible for the publication of the
newsletter and that Marrero exerted control over its content.361

When a former political appointee said that the patronage system was unstoppable, she explained
that there are things that are completely out of the hands of official decision-makers. Even if
employees are trying to act in a politically-neutral way, people beneath them will not necessarily
abide by this, and the succession of difficult to detect, politically-based decisions, will end up
benefiting (or harming) the party in power. But, according to interviewees, decision-makers are

360 Career employee.
usually complicit, either by omission or commission. Their complicity lies in the tacit approval provided through their non-interference with subordinates who politically discriminate or through actions that are simply harder to detect because they can delegate these political functions. As many interviewees and cases illustrated, decision-makers “have people that take care of that,” “se cuidan más” (“they are more careful,” literally translates to “take care of themselves better”). And, as several decision-makers confirmed, there are always subordinates that are in charge of politicking and of doing the “dirty-work.”

Government employees are far more likely to notice discrimination in the hiring processes than are individuals outside of the public sector that are competing for government jobs. Nonetheless, discrimination in hiring processes is often not challenged by government employees for a variety of reasons: because of the fear retaliatory actions (e.g. demotions, unfavorable transfers, harassment), because of a general sense of impotence regarding the practices, or because of the acceptance of these practices by employees as something normal and expected in the organizational environment. As one interviewee explained, “the regulations are violated with mechanisms that appear legal, and then, where is an employee to go? To which forum? ... you are being deprived of competing based on your merits.”

Furthermore, these actions are oftentimes not challenged because of the general perception that everyone does it, “‘ay, that happens in every administration,’ they justify it, for example if I were an employee that stands to benefit from this administration, I could say, ‘ah, the others did it, why can’t we?’ The value of honesty is distorted based on what the others did. If the others did it, my party should also do it.”

362 Career employee.
363 Career employee.
5. Learning

After some time, employees start thinking about human resource transactions as the result of some political calculation, and they express it in these terms. For example, one of the career employees was requesting a transfer to another agency, [“do you think you will get it?”], and she told me, “well, he can either not give it to me, because he wants to screw me over, because I’m not from his party; or he’ll go along with it, because it will open up the opportunity for him to bring one of ‘his’ into the agency.”\(^{364}\) It is not about where this employee’s services are the most needed, where they could be put to better use. Another career employee tried to warn her husband about these practices, tried to dissuade him from applying to a government job when their party was out of power: “he came from the private sector, and wanted to apply even though ‘los nuestros’ (ours) were not in power. ‘Don’t do it, you are not going to be chosen, it already has a name and a last name, it’s not going to be you, it’s not going to be you…. ‘that’s not valued here’ (his experience).” Upon her husband’s insistence, “‘okay, apply and we’ll talk.’ They didn’t call him, and when they finally did, they wanted a reference.” [“From the party?”] “Of course.” He didn’t get the job and was only able to get a government job when his party was again in power.\(^{365}\)

Another interviewee, a career employee that had experience in the private sector, recounted how she had gone to many interviews and even though she consistently had one of the highest scores, she would never get hired. One day, while waiting in a room with other candidates, she discovered why. One of the candidates told her “this is only to comply with the processes, because that position is for me, but the process has to be carried out.” [“Did she get it?”] “Of

\(^{364}\) Career employee / political appointee.

\(^{365}\) Career employee.
course.³⁶⁶ After this, the interviewee decided not to go to any more interviews when called and wait until her party was again in power. This is indicative of some powerful learning from the witnessing of favoritism/political discrimination patterns in hiring--individuals decide to not even try because they believe they will not be hired. On the flipside, experiencing or witnessing hiring (or positive personnel decisions) based on political affiliation creates the expectation that they will be hired (or at least truly considered for a position), promoted or otherwise treated favorably or at least fairly when their party is in power. These experiences feed into the belief system, into the patterns of expectations, reinforcing the logic of the informal system.

6. Conclusion
It is not only, nor mainly, entry into the system which influences political identification and politicization of official functions, as the next chapters will show, it is the continual reinforcement.

The surveillance described in these chapters is not uniform or unified, it comes from different actors in the environment: one’s co-workers, supervisors, supervisees, political groups, and even external actors (e.g. politicians, political fundraisers). Surveillance becomes, with time, like a running tab—how an employee acted both when her party was in or out of power: did she donate to the party or not? Did she go to the party activities? How did she treat the insiders when she was in power? Did she favor them? How did she treat outsiders? Did she collaborate with them? As an outsider, did he collaborate with the insiders? Who did he vote for? On balance, is he a trustworthy member of the group? This also happens at the collective level: How did the NPP or PDP administrations behave towards our people? Did they persecute, trample, discriminate against our people? This multiplicity of actors will influence what will happen when

³⁶⁶ Career employee.
the power structure changes. In some measure it determines how one will be treated, and how much will one be trusted, and by whom.\textsuperscript{367}

This multiplicity of actors will influence what will happen when the power structure changes. In some measure it determines how one will be treated, and how much will one be trusted, and by whom.

The next chapter describes the experience of becoming an outsider after being an insider, as one’s party cycles out of power—which often involves the worsening of employment conditions and is the phase during which political discrimination is most likely to be experienced.

\textsuperscript{367} This case illustrates how not acting with enough political zeal can have consequences on your employment: “The essence of Mercado–Berrios’ political discrimination claim is that she was not hired for a permanent position because she was an insufficiently zealous supporter of the Popular Democratic Party (“PDP”), as evidenced by her refusal to buy or sell PDP event tickets and her failure to secure an endorsement from a PDP politician. The jury agreed, finding that her “political beliefs or ideas were a substantial or motivating factor” in Cancel–Alegria’s hiring decision”’’ (Mercado-Berrios v. Cancel-Alegria, 611 F.3d 18 (2010)).
Chapter 4. From Insiders to Outsiders

As political parties cycle out of power, the work conditions and career possibilities of the public employees affiliated with (or perceived to be affiliated with) the party change along with their parties’ status. When a party is out-of-power, its members or presumed members are viewed, just as their party, as outsiders, and are more likely to be distrusted and experience negative changes to their work conditions, including political discrimination and politically-motivated harassment.

Chapter 3 described the initial experience/phase of the model, as employees enter into government employment. This phase is important because the circumstances of entry into the system will partly determine how employees will be perceived in terms of their political affiliation or preferences. Chapter 3 showed how political affiliation is used informally, but systematically, in government personnel management decisions. Nonetheless, interviewees who entered government because of their political connections (or perceived political affiliation) believed that they had entered based on their merit. Given this belief, the first experience of transitioning to an outsider status can be incredibly confusing and shocking to employees—they might not understand what is happening, why they are being treated with distrust, why other employees start treating them differently.

In this chapter, I show the experience of public employees as they transition from an insider to an outsider status, a change that often involves the worsening of employment
conditions, that range from slight distrust (e.g. not being invited to certain meetings; not having the same employment opportunities), to being completely marginalized, relieved of all one’s duties, harassed or dismissed. These experiences come to shape employees’ subsequent expectations regarding political administration changes, as well as their perceptions regarding members of the opposition party, as will be discussed in Chapter 5. I find that experiencing the outsider status directly contributes to the continuation of the patronage system, by further socializing employees into a more politicized identity, leading to an us vs. them mentality based on political affiliation; and that this increased politicization in employees makes them more likely to engage in or to be targets of political discriminatory actions. Although scholars regularly study insiders, attention to outsiders and the experience of outsiders shows how distrust and the political discrimination it brings about binds actors in a patronage system, locking them into individual and group dynamics with enduring effects in the way that employees related to one another, and contributing to the continuation of patronage practices. The employees’ experiences are narrated within the context of an informal patronage system working within a regulated merit system.

Although federal and state protections lessen the possibility of large-scale dismissals based on political affiliation, public employees in the Commonwealth of Puerto Rico continue to be managed politically or with political affiliation as one of the main qualifiers, which is not only unlawful but unconstitutional. In a merit system, demotions, transfers, reclassifications, changes to employee salaries, among other personnel actions, are meant to be based on employees’ performance. Nonetheless, these merit system tools and processes, are systematically used in support of the informal patronage system, to punish or to favor based on political qualifications or performance.
This chapter starts by describing some of the most common personnel transactions in the period preceding general elections as political parties try to position as many loyalists into career positions in order to protect them from a possible change in administration, and in this way to maintain as much control as possible over the bureaucracy. This is followed by a discussion of the most common personnel transactions after a change in political administration—with the incoming administrations actively searching and rooting-out employees who were screwed-in by the preceding administration, this, in order to minimized the opposition’s level of control and access, as well to meet the demands of their base for “revancha,” as I will discuss in Chapter 5. In the remaining sections of the chapter, I address the subjective experience of employees as they live through political discriminatory experiences.

1. “Screwing-in”

The period before and after elections, as described by interviewees and captured in court cases, is one of increased political tension, with employees of the different factions acting like “football fans,” “being out for blood,” bullying each other, laying claim to what will be theirs if their party wins: “I will get this office when I win,” “wait and see what will happen when we are in power,” “you are going out!” It is a time, also, of heightened expectations, when employee political groups develop lists recommending employees for career and political appointments, ranging from the lowest career positions to the highest posts. Political operatives assemble lists of persons to be punished if their party loses (sometimes called “black-lists”). Elections arouse such heightened emotions because so much seems to be at stake. Individually and collectively, it marks the possibility of one’s political party changing status, and one’s status from insiders to outsiders, or vice-versa along with one’s party—which translates to 4 to 8 years of better or worse job conditions and possibilities, not only for employees, but for employees’ families as well.
Officially, to uphold the merit principle, during the two months preceding a general election and the two months after, there is an electoral moratorium (“veda electoral”) during which nominating authorities are prohibited from making any personnel transactions involving the essential areas of merit (recruitment and selection, promotions, transfers and demotions, trainings, retention). This prohibition is described as a preventive measure to curb both politically-based favoring and well as punishing behaviors. The electoral moratorium:

is a watchman by excellence of the merit principle that governs public service, legislated estoppel\(^{368}\) for the four months in which because the maximum effervescence of political passions have been reached, human flaws could be translated to kindness for party members or into reprisals against the adversary, and determine changes in personnel that are foreign or against the fundamental principle.\(^{369}\)

Before (and during) the moratorium, there is a flurry of activity as administrations attempt to leave as many of “their people” in government positions as parties gear up for the upcoming elections—making it so that regardless of what happens in the election, as many employees of the current political party will be in place as possible. Agencies hire for vacant positions, make employee transfers, and move, “place” (acomodar) or “screw-in” party loyalists, including employees in trust or confidential positions and transitory employees, into career positions.

As a career and former political appointee explained, “the most important “encomienda” (task of importance) we had before elections was to “accommodate” as many party-loyalists as it was possible (in career positions) ... You work with human resources, to leave them there, immovable. There is a very big battle over this...”\(^{370}\) They “acomodarlos” or place them in career positions (how they see it, which implies care and protection)—and also more control for the

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\(^{368}\) “Judicial devise in common law legal systems whereby a court may prevent, or “estop” a person from making assertions or from going back on his or her word.”


\(^{370}\) Political appointee / career employee / contractor.
party-- or “screw them in” (how the opposition sees it) in order to prevent affiliated employees from being easily ousted from their jobs when the administration changes and they become outsiders. As a long-time career employee explained, “they look for all sort of legal and illegal remedies and agreements” to screw people into permanent positions.

In essence, screwing-in employees is about making sure that the political composition of the workforce within an agency remains favorable (or becomes more favorable) to the party. The more loyalists a party has within the permanent career system, the more power and control it will have over government resources.

a. Screwing-in Through Legislation

Controversies over personnel practices that “accommodate/screw in” employees are sometimes discussed very publicly, as was the case during the 2016 gubernatorial election period. Before elections, the Governor and executive agencies continued giving permanency to employees and making appointments in an effort to “accommodate” or “screw-in” employees affiliated with their political party. The Governor announced the granting of permanency to more than one thousand irregular and temporary employees in the Department of Education’s school cafeteria system who had been appointed during his administration, as a social justice measure.371 At the same time, the gubernatorial candidate from the opposition party promised during the campaign to investigate all personnel transactions made after May 2016 and to remove all employees that were illegally appointed or appointed in a fiscally irresponsible way, “those that are being screwed-in at the last minute should know that they are going out!”372 It is estimated that more

than 10,000 employees were appointed to career positions or “screwed-in” during this period.\textsuperscript{373} Large-scale screwing-in of employees were also common during the 2012 elections, when a member of one of the pro-Commonwealth public servant’s committees at the executive agency regional-level posted an image of a screw-driver to Facebook with the following text: “Screw in as many as you want, in 2013 we have the tools to get them out.”\textsuperscript{375} The political groups operating within the agencies are vigilant of the personnel movements during this time and take the information they gather in their respective workplaces back to the party and to the incoming appointees once there is a change in political administration.\textsuperscript{376}

Figure VI. Screwdriver. Posted to “Servidores Públicos Populares DF Región Humacao” Facebook page-- one of the organized political groups of public employees at an agency-regional level-- November 10, 2012.

But it is not only the political committees within agencies that make expressions regarding these

\textsuperscript{373} “Favorecido el PNP a 56 días de las elecciones generales,” \textit{Univision}, September 12, 2016, http://www.univision.com/puerto-rico/wlii/favorecido-el-pnp-a-56-dias-de-las-elecciones-generales-video#eov

\textsuperscript{374} As a practical matter, given the Commonwealth's merit-based system for hiring and discharging civil service employees, the risk is greater that transitory employees, who may be more easily hired and fired, may suffer from the use of unlawful patronage practices. See 21 L.P.R.A. § 4554. It has been said that “invidious political [party] discrimination is mainly directed against humble public employees or [those] with scarce resources” (Casiano v. Departamento de Educacion, 97 J.T.S. Case No. 33, at p. 718 (P.R. Sup.Ct. March 19, 1997) (Fuster-Berlingeri, J., dissenting from denial of certiorari cited in Nieves-Villanueva v. Soto-Rivera (footnote 10, p.11))


\textsuperscript{376} Career and trust/political appointees that have worked with or are members of public employee political groups (4); Alvarez-Estrada v. Alemany-Noriega, Not Reported in F.Supp.2d (2011); O’Connell vs. Marrero Recio, 724 F.3d (2013).
practices. The “screwing-in” practices are so widespread and normalized, that press reports refer
to savings due to the Governor’s proposed “unscrewing” (“desatornillamiento”) of illegally hired
employees, and candidates to the governorship vow to fire all screwed-in or illegally
appointed employees in the campaign trail. The screwing-in / screwing-out patterns are well-
documented and long-standing, especially as it regards transitory employees and trust
employees.

There are large numbers of transitory and irregular employees that are commonly and
have historically been used for patronage purposes. These types of appointments are meant to
provide agencies with the ability to respond to service needs that are time-specific and of short-
duration, rather than recurring. The patterns of hiring large numbers of transitory employees
during an administration and through legislation giving them permanency in career positions
before elections (legally “screwing-in”), is considered one of the biggest abuses of the merit
system. These practices have created what is considered a parallel personnel system and an
alternative entry into the career system that obviates competition and other merit system
requirements. There were over 50,000 transitory employees who were given career
appointments between 1989 and 2004, through four laws. Three of these were passed within

https://www.elnuevodia.com/noticias/politica/nota/gobernadoridentificaempleadosilegales-2352073/
378 PRCRC, “Informe Sobre Discrimen Político en el Empleo Público en Puerto Rico”; Cónon-González, "El
Discrimen Político en el Empleo Público Mediante la Manipulación de los Sistemas de Mérito;" Cordero-Nieves et
al., El Discrimen Político en el Empleo Público.
379 Goodsell, Administration of a Revolution; Cónon-González, "El Discrimen Político en el Empleo Público
Mediante la Manipulación de los Sistemas de Mérito: El Caso de Puerto Rico"; Cordero-Nieves, "El Discrimen
Político en el Empleo Público"; "Informe del Comité del Gobernador para el Estudio de los Derechos Civiles en
Puerto Rico."
380 PRCRC, “Informe Sobre Discrimen Político en el Empleo Público en Puerto Rico”; Cónon-González, "El
Discrimen Político en el Empleo Público Mediante la Manipulación de los Sistemas de Mérito;" Cordero-Nieves et
al., El Discrimen Político en el Empleo Público.
381 Ibid.
382 P.R. Act No. 56 of August 16, 1989; P.R. Act No. 80 of July 26, 1996; P.R. Act No. 85 of March 24, 2000; and
P.R. Act No. 172 of July 30, 2004 (Cónon-González, 34).
six months of the general elections under administrations that had control of both the executive and legislative branches.383

This legal option of moving transitory employee to career positions was not possible during the 2004-2008 administration, during which the pro-commonwealth party had control of the executive, and the pro-statehood party of the legislative branch.384 The intention behind the legislation—screwing-in party loyalists-- was clear to the opposition-dominated legislature, and it was not passed. Additionally, the legislature legislated to further limit the Executive’s power of appointment by extending the electoral moratorium, which prohibits most personnel transactions, to 4 months before elections (starting in July) instead of two months. In response, the Governor issued an Explanatory Statement (DE-2008-01), which are written statements that accompany laws, usually for public relations or political reasons, but increasingly used for policy interpretation and implementation.385 The Governor’s Explanatory Statement specified that the prohibitions during those additional months would only apply to personnel transactions that involved the recruitment of new employees into the government’s personnel system, therefore, agencies could continue to recruit from within government.386 After the change in administration, the Secretary of Justice of the incoming administration ordered an investigation into all personnel transactions in the Executive branch during the July 1, 2008 January 3, 2009 period,
and found over 64,000 personnel transactions, which were to be declared null and illegal.\textsuperscript{387}

After the approval of Law 7 of 2009—during the 2009-2012 pro-statehood administration—thousands (estimates range from 12,000-30,000) of public employees were laid-off as a measure to address the fiscal state of emergency in the Commonwealth.\textsuperscript{388} This law was implemented after 8 years of a pro-commonwealth administration, and the initial intention was to lay-off all non-essential employees hired during that period. A person familiar with the implementation of the law expressed that although, “everything was expressed in terms of reducing government… it was understood that all the employees that were to be laid off were from the opposition party (pro-commonwealth).\textsuperscript{389} But after several legal challenge (and after laying-off transitory and irregular employees), the administration ended up laying-off employees that had entered public service during the preceding 13.5 years; affecting both pro-commonwealth and pro-statehood employees.

The state of fiscal emergency did not prevent the administration from hiring thousands of transitory employees after the massive lay-offs, and it did not prevent it from proposing, 8 months before the general elections, legislation to award permanency to employees in transitory positions. Nonetheless, because of the shock to the system that the massive layoffs caused, there was widespread opposition to the measure, and it was not passed into law.\textsuperscript{390} By the next

\begin{itemize}
\item \textsuperscript{387} “Más de 60,000 transacciones de personal,” \textit{Associated Press}, (2009), \url{https://www.wapa.tv/noticias/locales/mas-de-60-000-transacciones-de-personal--20090713132016.html}.
\item \textsuperscript{388} Special Act to Declare a State of Fiscal Emergency and to Establish a Comprehensive Fiscal Stabilization Plan to Salvage the Credit of Puerto Rico, Act No.7-2009, March 9, 2009; “El problema con el despido de empleados públicos,” \textit{El Nuevo Día}, April 21, 2015, \url{https://www.elnuevodia.com/noticias/politica/nota/elproblemaconeldespidodeempleadospublicos-2037036/}
\item \textsuperscript{389} Contractor.
\item \textsuperscript{390} As one of the newspaper articles alerted, “Jenniffer González wants to screw-in transitory employees—In the midst of the fiscal crisis and after the massive dismissal of thousands of public employees under Law 7, Jenniffer González filed a bill that proposes granting career positions to temporary employees” (“Jennifer González quiere atornillar a los empleados transitorios,” \textit{Primera Hora}, April 4, 2012, \url{http://www.primerahora.com/jenniffergonzalezquiereratornillaralosempleadostransitorios-632147.html}).
\end{itemize}
administration (pro-commonwealth, 2012-2016), it was back to business as usual, and in 2016, four months before general elections, another law was passed to give permanency to transitory employees.\textsuperscript{391}

These laws invariably framed the measures—using virtually identical language—as ones of social justice for the employees, and of administrative soundness, intended to end the abuse of transitory appointments, and the parallel personnel system that it created.\textsuperscript{392}

\textit{b. Screwing-in by Evading or Manipulating Personnel Processes}

Another group of employees that is customarily placed into career appointments before elections by evading merit system requirements, are those that entered public services as trust (or confidential) employees. Under the Commonwealth’s law, trust employees are of free-selection and removal and political affiliation is considered an appropriate criterion in their selection due to their role in public policy formulation and implementation. Trust positions include political appointees (such as agency heads) as well as employees that work directly with political appointees (e.g. assistants, aides, personal secretaries and drivers, regional directors).\textsuperscript{393}

Moving trust employees into career appointments prior to elections has become part and parcel (“uso y costumbre”) of personnel management in Puerto Rico and constitutes a sizable number of political discrimination actions.\textsuperscript{394} This move to career positions sometimes takes place after many years of serving as trust employees, which are often very high-intensity jobs,

\textsuperscript{391} The estimate of transitory employees in March 2016 was 19,742 (12,813 in agencies, 6,929 in public corporations) (Law of Temporary Employment in Public Service, P.R. Act No. 89-2016, July 25, 2016).

\textsuperscript{392} Colón-González, “El Discrimen Político en el Empleo Público Mediante la Manipulación de los Sistemas de Mérito.”

\textsuperscript{393} Each Individual Administrator can have up to 30 trust positions, unless the functional complexity or size of the agency merits a larger number of trust positions. Reduced to a maximum of 15 trust positions by P.R. Act No. 8-2007, Government of Puerto Rico Human Administration and Transformation Act.

\textsuperscript{394} Seventeen percent of interviewees (4) gained entry into the career system through trust or political appointments. Yolanda Cordero-Nieves et al., \textit{El Discrimen Político en el Empleo Público} (San Juan, PR: CEMGAP, 2016).
and among some interviewees there was a sense of entitlement to those career positions because of the services rendered. Others remembered how the HR director or agency head had asked them if they wanted to be placed in a career position and where; it just seemed like the norm to interviewees and they spoke freely about it. Interviewees who entered the career service through an initial trust position felt that they had competed for the position on their merits because other candidates had been interviewed. Even interviewees who had been able to choose their position and had been interviewed by their “political godfather” or “godmother,” felt this way, and emphasized their qualifications and experience for the position.

Employees that remain in trust positions after a change in political administration would be left in a highly vulnerable position because their political affiliation and loyalties would seem “obvious.” Furthermore, given that trust employees are at-will employees, there is a very high likelihood that they would be fired or targeted for other negative personnel actions (demotions, transfers, salary reductions).\textsuperscript{395} These employees do not have the job security that career employees have, and it is legal to dismiss employees from policymaking positions that require loyalty to a political platform.\textsuperscript{396}

In many places, when there is a change in control of the administration between two major political parties-in Puerto Rico, a change between the Popular Democratic Party (PDP) and the New Progressive Party (NPP)-overly zealous political operatives of the prevailing party terminate, demote, or reduce the salaries of employees affiliated with the outgoing opposition party…. This action in turn sometimes causes a reaction. In Puerto Rico, we have noted that at times, “the outgoing party attempts to secure the continued tenure of its members in


\textsuperscript{396} Nonetheless, determining if a trust employee is a policymaking employee (cases in which it is appropriate to use the political affiliation requirement), is not as straightforward as it might seem. This is so because many mid-level career positions were reclassified into trust positions, which is legal, but which allows the appointing authority great discretion in appointing for the position.
public jobs through a variety of devices, such as reclassifying policy-type appointments as career positions or making appointments in violation of Puerto Rico law.\textsuperscript{397} Additionally, trust employees are often the most trusted employees of top appointed agency executives, and as a measure of gratitude for rendered services and, more generally, it is a strategy to place politically-loyal employees in key positions.\textsuperscript{398} Trust employees that are placed or screwed-in (as an incoming administration will see it) in career positions are also targeted for adverse personnel actions. If any irregularity is identified in the process by which the employee was placed in a career position, the appointment could be considered null and void and the employee dismissed—dismissals of this type are also challenged in court as politically-discriminatory.\textsuperscript{399}

Sometimes trust positions are reclassified as career positions, which is allowed under Puerto Rico’s personnel law. These reclassifications are also seen as an act of care, protection or loyalty towards employees who worked in trust positions— and it can be interpreted as a betrayal, when political appointees do not place their trust staff in career positions. As one career employee and former trust employee expressed, “She’s a bitch, she didn’t even secure the positions for the people that worked for her.” Both interviewees and plaintiffs in political discrimination cases sometimes didn’t know that their appointments had been in violation of the formal merit system, and this perception was often based on the use of the official tools of the merit system (e.g. interviews), the involvement of the human resources office, and the apparent officiality of the personnel transactions (refer to Chapter 3).

Transitory employees who are not given permanency through legislation, and who are

\textsuperscript{397} Morales-Santiago v. Hernandez-Perez, 488 F.3d 465, 466-67 (1\textsuperscript{st} Cir. 2007), citing Sanchez-Lopez v. Fuentes-Pujols, 375 F.3d 121, 125 (1st Cir.2004).
\textsuperscript{398} Interviews, court cases.
left in transitory positions after an electoral event in which there is a change in political administration, are highly vulnerable to being fired or suffer other negative personnel actions based on their political affiliation, although these are also illegal actions. Employees, transitory or trust employees, who were illegally appointed to career appointments during the electoral moratorium period, or trust employees who were legally reinstated to their career positions, are also highly vulnerable after a change in political administration. The work conditions of the tenured, transitory, irregular, and trust employees who belong or are perceived to belong to the political party that is out of power (outsiders) can change negatively, ranging from no advancement in their position, to political harassment, to job loss. These negative actions toward outsiders, or employees from the opposition, are at the center of political discrimination cases.

But at the center of all these actions (screwing-in party loyalists, reclassifying prior trust positions as career positions)—are the parties’ concerns with maintaining control over government resources by having the most party loyalists placed in the permanent government (career service). As a former career and trust employee expressed, “you think that there aren’t conversations about when we have to be reinstalled in order for it to be legal? Who will be reinstalled? In what time-frame do I have to be reinstalled or have a promotion or a

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400 "Section 6.9. — Prohibition. — (3 L.P.R.A. § 1462h) In order to ensure the faithful application of the merit principle in the public service during pre and postelections periods, the appointing authorities shall abstain from making any personnel transaction which includes the essential areas of the merit principle, such as appointments, promotions, demotions, or transfers; nor shall they be able to make changes or carry out compensation actions or changes of job category. Excepted from this prohibition are the changes resulting from the termination of a probation period and the imposition of disciplinary measures. Failure to comply with this measure shall entail the voiding of the transaction thus carried out. This prohibition shall comprise the period of two (2) months before and two (2) months after the holding of the General Elections of Puerto Rico. Provided, That during said period, no personnel actions or changes whatsoever with a retroactive effect may be processed or registered in the personnel records. Upon approval of the Director, exception from this prohibition may be made in the event of urgent and unpostponable needs of the service duly evinced and certified pursuant to the norms issued by the Office concerning this matter,” Act No. 184 of August 3, 2004, as amended, “Public Service Human Resources Administration Act of the Commonwealth of Puerto Rico.”

401 The practice of “screwing-in”— or attempting to secure the tenure of party members in public jobs—is seen as a reaction to the custom of the prevailing party to “terminate, demote, or reduce the salaries of employees affiliated with the outgoing opposition party” (Morales-Santiago v. Hernandez-Perez, 488 F.3d 465, 466-67 (1st Cir. 2007)).
reclassification before it is illegal? All these things are planned with time, so that afterwards, when the others climb-on (“se monten”), they cannot affect us economically,”402 or otherwise.

2. **What Goes Up Must Come Down**

“After a change in administration, everything changes, people change”

In a typical scene after elections in one of the court cases, the plaintiffs describe the politically-charged atmosphere and the taunts directed towards the new outsiders in the Puerto Rico Department of the Family (in this case the NPP-affiliated employees) as a festive environment:

> On or about the first days of the new administration, PDP-affiliated (pro-commonwealth) individuals held festivities in the lobby of the DF’s [Department of the Family’s] Central Office to celebrate the change in administration... There were people with tambourines, singing, they had food and drinks, and had laid out a big sign welcoming the Secretary. These groups would harass NPP-affiliated employees and sing degrading, politically-charged songs every time an individual affiliated and/or perceived as being affiliated to the NPP would walk by. Defendants were present during these events and, as a result, were able to identify who the loyal PDP-individuals were and, conversely, who—like Plaintiffs—were not. ... In one specific incident a Plaintiff to this case was entering the building to access her office when several employees who were open supporters of the PDP that were singing immediately started singing “you’re going out, there is a new administration in power now, we are in charge, and you’re going out.” 403

In another incident, the plaintiff described how they were taunted with chants by their co-workers: “we came to clean the house, if you don’t like it you can go home,” “what comes up must go down,” and “we are red of joy [referring to the principal color of the pro-commonwealth party].”404

Although all interviewees (and many court cases) described the increased politicization of the environment, specifically during the election period the experience of being politically harassed or discriminated against did not touch all interviewees in the same manner, nor at the same time in their careers. Some administrations were highly political, they would “scorch

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402 Political appointee / career employee.
404 Ibid.
everything, cut heads” fire people on political grounds and substitute them with “their people,”
protect “their own,” without even trying to conceal it; they were “fearless.” As a career employee
described, “the agency felt like the headquarters of a political party.” Another career employee
(in a different agency) described the incoming administration as having a “diabolical political
rage.” Other administrations were less political, in these, the discrimination was more subtle or
even respectful—employees were not fully trusted with certain endeavors, but they were not
trampled either; they were for the most part left alone. During some periods, the administration
lasted eight rather than four years, and there was greater stability. During periods of political
stability or administrations that were more tolerant of (perceived) political opponents, or where
there was greater political homogeneity among employees, some interviewees lived in what they
described as “lalaland,” being completely oblivious to the suppositions made about their political
affiliation or about the political undercurrents in their workplace, and it was only when the
outsider status was experienced for the first time, that they became cognizant of what was
happening, when they became aware that they were being politically discriminated against.

   a. Rooting Out or Unscrewing

The incoming administration, the now “insiders,” will come in with their own “encomiendas,”
(tasks of importance) and one of the first is to audit the personnel files for the previous four-
or eight-year period, to identify irregularities in personnel transactions and do something about
them (fire, demote, lower salaries). Because of the patterns of benefiting insiders through
personnel transactions, auditing personnel files is a way to identify employees of the opposition.

As a former career employee explained,

   Look, independently of which party it is, when a party wins… the people that come in
into trust positions look for those personnel files. And then they know… how the
employee came-in and in which year, and then they start drawing conclusions… like,
‘look, so-and-so came-in in x year and… the person who was there was so-and-so who
was from the pro-statehood party.’ Maybe there is a letter of recommendation from a
party, or from a representative of the party, or comments from coworkers…

These practices target groups of employees as well as individuals and are sometimes very sophisticated—using the full array of tools of the formal merit system. For example,” [o]n January 2010, as a result of an audit of all the personnel transactions made by the CSIF [State Insurance Fund] during the years 2001-2008, two hundred and thirty-two (232) appointments made through “closed job announcements” were declared null and void.”405 As a result, six percent of agency employees were either terminated or demoted. The specific dates selected for the audit corresponded exactly to the dates in which the opposition party had been in power. The case centered on the choice of time frame with plaintiffs alleging that the audit was conducted for the sole purpose of rooting out pro-commonwealth employees, while the defendants—the agency executive and the HR director—argued that the time frame was chosen simply because during 2001-2008 there had been no comprehensive evaluation to evaluate personnel transactions. The court ruled in the defendants favor stating that “The mere fact that she [agency executive] asked that the agency determine if it was in compliance with its own regulations does not give rise to an inference of discrimination: Quite the opposite. Bending the rules for political advantage might be sufficient grounds for inferring discriminatory intent, but enforcing the rules for all employees is not.”406 This example shows how courts sometimes choose to ignore the deeply political dynamics underlying the seemingly routine and even desirable implementation of the merit system’s requirements—in this particular case, the evidence in the case docket shows a hyper-partisan agency environment at the time. Given the informal personnel management patterns, personnel file audits are a tool to sort through employees and quickly

identify employees those were benefitted by a prior political administration, and also serves to identify those who were not benefited, or were harmed—both of which, in these context, provide information that is indicative of individuals’ and groups’ political affiliation or alignment.407

As another former trust employee and career employee with over 30 years of experience explained,

The first thing the incoming administration will try to do is prove that you did an illegal transaction, that you placed a person or benefitted someone that you brought into the agency, or because the person is from your party, or because for some reason you have the power to benefit him. So, the first thing they do is examine the files of employees who were in trust positions… they identify you as belonging to the opposition party, and… in my case, they reduced my salary… capriciously.

The insiders-to-be, especially the employees that belong to the political party that won the elections, will give information to the incoming political appointees regarding who should not be trusted, who should be removed, or punished—“you should do something to this person,” “as soon as we win you have to remove “x person” or “you should investigate these personnel files.”408 Additionally, data from interviews and court cases illustrate the involvement of the political groups (see Chapter 2, Section IV) in these processes—there are mentions of “political liaisons” between the political parties and agencies, of employees who “dedicate themselves to identify[ing] the [political affiliation of the] people when they come in,”409 of political operatives being in charge of the personnel file audits, and of organized groups of political activists “who controlled the newly appointed officers” and controlled politics within the agencies; as well as of

407 When I began this research and read statements such as the underlined section of this quote from a political discrimination case, I would wonder how do they know? How can they possibly know? --“At the time of the audit, the Bank had just over 180 employees, of whom about 80% were NPP members and about 20% were PDP members. There is no evidence that the review process undertaken by defendants and their outside consultant itself was applied differentially or in a discriminatory manner; all twenty-three personnel actions taken during the review period were audited and corrective action was taken as to all twenty-three employees affected” (Sanchez-Lopez v. Fuentes-Pujols, 375 F.3d 121, 128 (1st Cir. 2004).
408 Career employee.
the use of informal lists and of black lists (or lists of employees belonging to the opposition).

As a former high-level employee narrated, when she first came into a position of trust (political appointment) she was given two lists of career employees by political operatives within the agency. She was told: “these are the people that will work with you, support you, and these are the people that will not.” She considers these lists a tool that can work sometimes against you, for example, when you do not want to favor those that you are pressured to.

\[b. \text{ Black lists}\]

There are unofficial lists of insiders and lists of outsiders, “...people that they wanted to hire and fire...”, to reward or to punish, official human resource lists are used for discriminatory purposes. Lists of those that “should” be punished, are sometimes referred to, in both interviews and court cases, as “black lists.” When interviewees talked about the lists, I asked them whether they had seen the lists. Only six of the interviewees, had seen the lists (high level officials, human resources personnel, and political operatives). A political operative explained that sometimes “the HR list is used, and the information (about political affiliation) is added.” Other interviewees, that had not seen the lists, still asserted their existence: “[The lists that you mentioned a little while ago—the ones kept of people by the groups—is that a physical list? Or is it a metaphorical list?] It is a list on paper, and that the political parties have.” Another interviewee said, “I have never seen a list. I’ve been told “you are not in the list,” so there must

\[\text{\textsuperscript{410}}\text{ See, for example, O’Connell vs. Marrero Recio, 724 F.ed (2013); Alvarez-Estrada v. Alemany-Noriega, Not Reported in F.Supp.2d (2011).}\]
\[\text{\textsuperscript{411}}\text{ There is simultaneity in the processes to determine who to benefit and who to punish. In fact all the phases described in this model are happening simultaneously. The dissertation chapters divide them into pieces and focus on specific aspects to better illustrate how employees experience the system.}\]
\[\text{\textsuperscript{412}}\text{ In some cases the use of lists of insiders and lists of outsiders was mentioned in passing. “Some of the newly-elected mayors also had lists of people that they wanted to hire to and fire from their local Consortium office” (Pagan-Cuebas, et al. v. Vera-Monroig, et al., 91 F. Supp. 2d 464 (D.P.R. 2000).}\]
\[\text{\textsuperscript{413}}\text{ Career employee.}\]
be a list, even if it is a mental list, there has to be a list.” A career employee explained that she was initially skeptical when she was told by a subordinate “you are the first in my black list.” She dismissed the comment as coming from someone in a moment of anger “I left it at that.” But when the administration changed, this person, from the opposition party, became her supervisor. After the interviewee was fired, she found out from a colleague that the person had said in a meeting that she was on the list and had to be removed, “Damn! When she said that I was in her black list, she really meant it. So yes. The lists exist.”

Instructions to prepare lists are sometimes given directly from the political parties’ headquarters and involve the agencies’ political groups, other times, the political party sends the lists to the agency head. The cases mention political groups involvement in personnel processes and politically discriminatory activities. In at least one of the cases, the HR Director was also the president of one of the political employee groups in the agency. In the cases there are mentions of “political liaisons” between the political parties and agencies, of employees who “dedicate[s] themselves to identify[ing] the [political affiliation of the] people when they come in,” of political operatives being in charge of the personnel file audits, and of organized groups of

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414 Career employee / political appointee.
415 Career employee.
416 There is also cursory mention of these groups in a Harvard Kenney School case study on the leadership skills of Juan Manuel Rivera, a 1990s Puerto Rico Secretary of Labor. This case study provides a relatively recent example of a highly politicized public agency. In the case study one can see the strong pressures to hire and promote personnel along party lines coming from agency employees: “Upon his arrival at the department... Rivera immediately encountered anxious hostility from the agency staff, most of whom were members of the NPP. “I felt bad every time I got into an elevator. I felt that people wanted to kill me, the political atmosphere at the department was tense.” He also encountered pressure from his own PDP to place certain people in assorted administrative positions within the department. “When I got to the agency, I got a call from a political group... They came with a list of people and positions,” he recalls. There were the people who had helped the PDP come to power... they reminded Rivera” (Varley and Altshuler, “Discussions of Leadership: The Administration of Juan Manuel Rivera. Case Number 1028.0,” 3.).
417 Co-defendant Villahermosa is a well-known PDP member and activist at the SIF, being the President of the PDP employees therein, in addition to the Human Resources Director of the SIF (Carlos López’ depo. p. 23; Luis Alicea’s depo. p. 1; Nelson Delgado’s depo. pp. 15-16, 23; Exhibit 1, Muñiz’ depo p. 111.Peguero-Moronta v. Santiago, 464 F.3d 29 (2006).
political activists “who controlled the newly appointed officers” and controlled politics within
the agencies.

Nine cases refer to the lists or to “black lists” and even in these cases it was hard for the
plaintiffs to prove the existence of the lists, and/or to tie the lists to the specific defendants. 418
Even in cases in which the plaintiffs were able to produce a list as part of their evidence, the
court might rule it as circumstantial. For example, in one case the court determined that
“[d]espite Plaintiffs' suggestion otherwise, nowhere does the spreadsheet include information
regarding political affiliation.” 419 What the spreadsheets did include was the names of each of the
employees, and details about their current and prior job title and location; their salary; the job
announcement number of their position; and effective date of their promotions. ... Even though
plaintiffs were “well-known and open supporters” of the opposition party, that “their political
affiliation was common knowledge...” and that they had “occupied municipal office or trust
positions,” none of these were sufficient, the court ruled that the political discrimination claim
failed “on this most basic requirement: That the Defendants knew of Plaintiffs’ political
affiliation.”

In another case, a witness declared in his deposition that “there was a meeting on
December 19, 1999 at the PDP’s Central Committee in which instructions given were to identify
the NPP (pro-statehood) employees so as to substitute them with PDP (pro-statehood) members
and activists...420 The co-defendant that ordered the list, which they referred to as “the black list”,

F.Supp.3d 494 (D.P.R. 2015); O’Connell vs. Marrero Recio, CASE 3:10-CV-01971-MEL, Document 89-2, Filed
Santiago, 464 F.3d 29 (First Cir., 2006); Franco-Figueroa v. State Ins. Fund, No. CIV 11-1025 JAF, 2013 WL
was the President of the pro-commonwealth employees in the public corporation, and was also the *Human Resources Director* of the corporation. Other times, instructions to prepare lists came from high-level officials:

The local office Directors instructed by [defendant] Wilfredo Alemañy [the Secretary of the Family] (sic) began to make lists of all employees who were identified with the PDP and had to be fired. ... Alemañy met with several NPP employees...to discuss the lay-offs. ...Alemañy harassed employees who had been notified of their dismissal by making fun of them asking “hey, didn’t I fire you already?” Around January or February 2009, Alemañy requested an employee of the Department of the Family... to prepare a list of all personnel who were not members of the NPP. When she refused, the list was prepared by Wanda Pabón. Alemañy prepared a letter to Human Resources informing which positions he wanted to be eliminated.\(^\text{421}\)\(^\text{422}\)

These last examples feature the participation of the HR offices at the respective agencies. HR appears to be the hub where the formal and informal systems coordinate and work together: official lists are used for unofficial purposes; the official civil service structures are manipulated in service of the unofficial patronage system; unofficial groups and actors influence personnel processes; the power structure does not necessarily correspond to the organizational hierarchy, they bend to the unofficial political hierarchies within and without. As described in a particular case, the agencies adopt “a policy of political discrimination.”\(^\text{423}\)

Because of the practices described in the previous chapter, date of entry into the system and date of changes in salary (raises, promotions, favorable transfers) are often used as proxies in

\(^{421}\) Alvarez-Estrada v. Alemany-Noriega, Not Reported in F.Supp.2d (2011). “Defendants claim that although plaintiffs allege that Alemañy had knowledge of the *political* affiliation through the preparation of these lists, plaintiffs fail to illustrate specifically how the lists were prepared. (Docket No. 28 at 5.) This argument demands a “level of specificity” that is not required at this stage of the proceedings. *See Ocasio–Hernandez*, 2011 WL 1228768, at *11. As noted above, the complaint contains discrete factual allegations which make Alemañy’s alleged knowledge of remaining plaintiffs’ *political* affiliation plausible.”

\(^{422}\) In another example, after the 2012 election the Mayor of Yabucoa was given a list containing “each employee’s name, department, position, and start date”, according to a witness “when Mayor Surillo received the list, he skimmed it, read certain names out loud, and made statements such as: “[plaintiff] Carlos Lazu, oh, he was one of [Mayor] Surillo’s ‘tirapiedras,’ he’s out’; and “[plaintiff] Nezmaida Medina, who’s that? Oh, the redhead sister [of the former NPP-affiliated leader]. [She’s] out” (*Diaz-Garcia v. Surillo-Ruiz*, 98 F.Supp.3d 396 (2015)).

determining employees’ political affiliation, and as the basis for political discriminatory actions. In the cases and as narrated by the interviewees, investigations into personnel practices over a certain period (personnel file auditing), information provided by now-insiders, and the informal lists of employee’s political affiliations are used to identify employees of the opposition in order to root out or “unscrew” these employees through targeted layoffs, dismissals, non-renewal of contracts or temporary appointments, actions such as dismantling entire units or reorganizing agencies according to where employees of the opposition are concentrated. In cases were removal of employees is not possible or difficult, now insiders might resort to marginalization and harassment of outsiders, to the extent of sometimes amounting to constructive dismissals, or a series of purposeful actions that create conditions intended to be unbearable and make the employee quit (marginalizing, harassment, deterioration of work conditions, salary deductions, among others). These actions are sometimes based on distrust (keeping an individual perceived as “dangerous” isolated or neutralized), to adjust what are perceived as ill-gained promotions or salary increases, sometimes based on revancha or revenge

425 See, for example, Acevedo-Diaz v. Aponte, 1 F.3d 62, 1993 WL 282920 (defendant allegedly terminated or failed to renew over 300 employees hired under the previous administration, citing financial distress).
426 See, for example, Acevedo-Diaz v. Aponte, 1 F.3d 62, 1993 WL 282920; Nieves-Villanueva v. Soto-Rivera, 133 F.3d 92 (1997); Carrasquillo v. Aponte Roque, 682 F. Supp. 137 (D.P.R. 1988), citing Vázquez, 678 F.Supp. at 39 n. 5 [eliminated 64 school manager positions; positions that had been established under the administration of the opposition party]; Acevedo-Cordero v. Cordero-Santiago, 958 F.2d 20 (1992) [eliminated approximately 600 civil service positions, which had a high proportion of opposition party members].
427 See, for example, Belkis Gonzalez-Lopez v. Idalia Colon-Rondon, et al., Civ. 14-1149CCC (2015) [dismantled the Adoption Center, which had been established during the administration of the opposition party and in which opposition party loyalists had been placed or screwed-in]. Examples of reorganizations of programs or units were provided by 8 interviewees.
428 A description of constructive dismissal described in a political discrimination case: “Ms. Aponte states that she was constructively dismissed one day after the new administration took office, when she was denied access to her office, told that she was "not a person of trust," and given no further duties. Her protests went unanswered” (Acevedo-Diaz v. Aponte, 1 F.3d 62, 1993 WL 282920). In another example of what might be considered a constructive dismissal, “… the Department's newly entrenched leadership eliminated many of his former duties, retrieved his official cellphone and departmental car, evicted him from his office, and reassigned him to the performance of mundane tasks that he viewed as beneath the dignity of his rank” (Rojas-Velazquez v. Figueroa-Sancha, 676 F.3d 206, 208 (1st Cir. 2012)).
(targeted at the individual employee because of the employees' past actions; or the individual is targeted because he is part of the opposition), or in order to be able to give the position or responsibilities held by the targeted employee to trusted insiders or to people decision-makers owe themselves to. As a consequence of these practices, “some rise, others descend,” by and large based on their political affiliation or connections. Descent is particularly difficult for employees that are experiencing it for the first time, who might not even initially understand what is going on and might interpret it initially as a lack of trust or withdrawal of trust.

Political discrimination as experienced by interviewees and plaintiffs in the political discrimination cases, follows a similar sequence. During a particular administration, employees either got hired, promoted, or held trust positions; overall, most describe good or satisfactory working conditions and of career advancement. After elections and a change in administration turns them into “outsiders”, these positive conditions change. Even if they didn’t know it, the good working conditions they were enjoying were because they were considered insiders, and the favorable conditions that they enjoyed during a period is what brings on a subsequent outsider status.

For those experiencing it for the first time, political discrimination is a shocking experience. They described bewilderment, not understanding what was happening. They reported asking their superiors what was happening, and getting vague or, sometimes, reassuring, but false, answers. A career employee’s initial reaction to what she eventually came to define as

429 A description of constructive dismissal described in a political discrimination case: “Ms. Aponte states that she was constructively dismissed one day after the new administration took office, when she was denied access to her office, told that she was "not a person of trust," and given no further duties. Her protests went unanswered” (Acevedo-Diaz v. Aponte, 1 F.3d 62, 1993 WL 282920). In another example of what might be considered a constructive dismissal, “… the Department's newly entrenched leadership eliminated many of his former duties, retrieved his official cellphone and departmental car, evicted him from his office, and reassigned him to the performance of mundane tasks that he viewed as beneath the dignity of his rank” (Rojas-Velazquez v. Figueroa-Sancha, 676 F.3d 206, 208 (1st Cir. 2012)).
discrimination was being stripped of her responsibilities, of having her office searched, of
suddenly not being included in meetings as if “an order of distrust had been given against me.”
And she tried to gain that trust:

at that time I called it distrust... and I even justified it... at that time I would say “one has to
demonstrate that one is here to work, blah, blah, blah,” but no. That was not going to
happen.... [so, how did you leave lalaland?] when I was fired! Really... never, ever did I get a
position because a politician gave me a letter... But people swore that I had. And that is the
worst thing in life... to be thought of as something that you are not.  

This employee was made an outsider because of the assumptions of her political affiliation based
on her career trajectory and on her family members’ political affiliation, “they act as if political
affiliation were hereditary!” This same sense of bewilderment, of not understanding what was
going on was repeated over and over in the interviews as well as in the cases. Even very
politically active employees expressed an initial sense of not knowing what was happening, and
a sense of loss and also of betrayal: “I spent two years doing crossword puzzles. She [my boss]
eventually took away my tasks and responsibilities... I would go home crying, in an anxious
state. I would close the door to my office because she would not give me work. And I would see
all my supervisees meeting with her, and when I would ask them about it, they would offer no
explanation... they betrayed me...”

Another career employee had another person put “over her” to take over her
responsibilities in the HR division, do the “dirty work,” the “politicking,” and keep an eye on
her. This other person had political but not professional qualifications, and the agency had two
people for the same position. She described the other person as having policing functions over
both insiders and outsiders (specially over her). She describes being subjected to continued
harassment. She deteriorated emotionally, as did other outsiders in her division. When she asked

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430 Career employee.
431 Career employee.
for help, “I can’t take it anymore,” she was told “this is almost over (the cuatrienio), hold on, it’s almost over.”

Putting another employee “over” an employee that one wants to marginalize, humiliate and/or keep an eye on, was described as an extremely common practice by interviewees and was frequently described in political discrimination cases—it was described by one interviewee as a way in which incoming administrations “grab power.” As explained by an employee that lived this experience narrated, “they placed a person over me, double functions, double responsibilities,” she couldn’t take it for long and transferred to a government instrumentality that was under the power of her party.432

In the opinion of an interviewee this practice contributes to government bloating, “there are two teams, they send the losing team to sleep—they buy their silence with the salary, meanwhile, they are waiting for their turn”433 in power.

Another career employee who was stripped of all responsibilities, harassed, and whose salary was substantially reduced, explained, “I got clinically depressed... I felt, not that they had pulled the rug from under my feet, but that they had pulled the entire floor... it was a combination of losing my salary, which affected my self-esteem, and loss of dignity for the work that I had performed for more than 28 years... I felt impotent, with a lot of rage, and with nowhere to go.”

There are numerous examples of this type of discrimination in the cases and interviews, of “imposed idleness,” plaintiffs being “maintained idle all day long,” for years, “continued doing nothing, just as he had since 2001 [until 2005].”434

432 This can be a Municipality, the Legislature or agencies that have agency heads with 10-year appointments.
433 Citizen.
The heightened level of politicization in some of these environments, brought with it open politically discriminatory remarks, from newly emboldened co-workers (now insiders), and loss of job or dramatic deterioration of work conditions for the outsiders (e.g. being harassed, openly humiliated). Recalling one incident a former career employee narrated her first experience of political discrimination, “when the pro-Commonwealth Party arrived, they had a personnel director… who was a political activist… that’s when my odyssey started. One time she told me, ‘you are the only pro-stateholder that I have left, the only pro-stateholder,’ she was shouting this in the hallway. That was in the central offices, which were deadly silent, ‘when are you going to get the hell out of here?’ [were there other people?] people started coming because of the shouting.”^435

Interviewees frequently mentioned people being “exiled” or “vanished” after a change in political administration. People can be vanished physically (as in being sent to a far-away office) or figuratively—far from what their responsibilities and job functions where (even though they officially might remain the same)—“he was sent to Mona (a small island not suited for human habitation)”^436 explained a career employee about a fellow employee—he was a supervisor, but with no one to supervise. Another interviewee remembered witnessing this practice in her first government job:

It was my first job experience… I was a rookie… there was a gentleman, I will never forget him, he was literally in a covacha, that covacha had a desk. I would see him every day reading the newspapers, and I would say, ‘what are the job responsibilities of this man? Is he a janitor?’ Noo, his position was one of Director, Executive Director, something like that, and what happened was that they had taken away all his responsibilities, and that’s what he did. He would go every day, sign-in at 8 am, from 8-12, and from 1-4:30. It was not that he read El Mundo, he read El Mundo, El Nuevo Día, el Vocero, and all the other newspapers that could exist, because he would do absolutely nothing else, and that’s what I saw him doing for the entire year that I was in that agency. [what about the people around? How did they act?] as if that were the most normal thing

^435 Career employee.
^436 Career employee / trust employee.
in this life … for all purposes, he did not exist. I remember he had dark glasses, I would say, my God, how can he...? he was rendered completely invisible, he did not exist.\(^{437}\)

Political discrimination was described as “humiliating,” as one of the worst experiences in their lives, as a situation where “they are trying to break your spirit... some people can’t take it, they go crazy.” \(^{438}\) When describing these experiences some interviewees became highly emotional, some cried, others sobbed... “They not only took my tasks away from me, they took away my profession... merit does not exist”, \(^{439}\) “you love something, feel passionately about it, you give your everything. And then... they minimize you like that... it would hurt anyone.”\(^{440}\) In both court cases and interviews, plaintiffs repeatedly referred to and described the mental and emotional anguish suffered because of the discrimination or harassment.

There was also a perceived change in the way some employees acted, when their administration was in power that had the effect of seeding distrust among observers. As a career employee and former trust employee wryly observed,

People that in the prior administration were frequently sick, that had almost no sick days left… and I never questioned them… you eventually realize that it is a lie… suddenly, after the administration changes, they become stellar employees, arriving at 8 sharp, their illnesses disappeared… wait, wasn’t this the same employee that was always sick? Now it’s their administration, from their party-- what a marvelous cure!!\(^{441}\)

Although some individuals, based on their prior experiences with highly political administrations, were expecting the backlash and welcomed the new administration with distrust, many were not. Similarly, individuals who were being used inadvertently to discriminate against others, didn’t fully realize it. Many of the political discrimination cases involved people that had known each other previously but in different capacities. The change in administration brought a

\(^{437}\) Career employee.  
\(^{438}\) Multiple career and trust employees.  
\(^{439}\) Career employee.  
\(^{440}\) Career employee / trust employee.  
\(^{441}\) Career employee / trust employee.
change in the official way in which they related to each other, who was included, who was excluded; a redistribution of trust, of privileges. As a career employee explained, “it is very difficult to work in government when you are from the opposition party,” in other words, when you are an outsider.

The above-described actions—screwing-in, file-auditing, unscrewing and other political discriminatory actions—are organizational mechanisms through which parties wield their power. To be able to do any of these, party representatives draw from positional power, from the authority derived from being the nominating authority (i.e. executive agency head)—which has the official authority over personnel actions in the agency. Official authority is therefore used through formal and informal means to respond to the need for control of the party in power, to which nominating authorities— as political-appointees—are subject to.

\[c. \quad \textit{Political Stamp (“El Sello”)}\]

As mentioned in previous chapters, one of the informal mechanisms that allows for the identification and political management of public employees is the political stamp, an informal labeling mechanism based on cumulative information on the employees’ date of entry into public service, the conditions surrounding their entry (e.g. use of “palas”), involvement or lack of involvement in political activities, among other employee actions. The political stamp features prominently in the outsider experience as well, given that it is used to discriminate. Many times employees self-identify and are vocal about their political preferences. Other times they are identified by others, as explained in the previous chapter, because of who referred them for the job (elected official, politically-connected individual, family member) or because of the period in which they entered the public service they are assumed to be of a particular political affiliation.

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\textsuperscript{442} Career employee.
As an HR Director told me, “it’s not hard. I look at your resume. Oh, you worked in X place in 2004, it’s obvious (your political affiliation).” As a former employee who was fired and had been unable to get a job expressed, “I wanted to erase the last 8 years from my resume.” And another employee expressed referring to a former colleague that could not get a government job, “Bendito, that girl is so good, but she has that stamp…”

Oftentimes employees were directly asked about their political affiliation or identified based on their reactions to other employees’ questions or to party operatives’ requests for political work or monetary contributions. There were numerous examples in interviewees’ and plaintiffs’ accounts, of entering unexpectedly hyper-partisan environments, or confronting political requests that they found unacceptable, and being stamped because of their unwillingness to do as they were told or because of their work history.

An example of giving oneself up was described by a career employee—who got her first government job, as a contractor, through a family member. At the time of this first government job, the interviewee was young, and had not defined herself politically.

The team that I was supervising was made up of individuals that had been referred because of their political affiliations. Others had family or blood ties with politicians. There was resistance to my arrival. They didn’t know exactly where I had come from. And assumed that I had been “parachuted” by someone. That I had been imposed… It was not easy to earn their respect … one time… I got a phone call, saying that there was going to be a meeting with all the staff and that I should bring the money of the “taquillas” (tickets to political party activities, such as birthday parties for politicians) … I didn’t know, I didn’t do it. The next day, at ‘nivel central’ (agency’s central office), that person was asking employees where the money was. My supervisees said that I had not told them about it. The person turned towards me and raising her voice with a threatening demeanor said ‘you are not a penepé (pro-statehooder)!!! You are infiltrated!! You are not a penepé!!’ I remained silent. I went to the bathroom and cried. I didn’t lend myself for that, I didn’t do it.\footnote{Contractor / career employee / trust employee.}

Her contract ended shortly after and was not renewed. She eventually came to identify herself...
with the main opposition party, which she had been “stamped with” even prior to defining herself politically. As she explained, “[t]hings happen on the way. You made decisions of taking-on certain jobs and they marked you, and you have to live with it and own it…There is no other way. That’s the way it is. The way it’s structured.” Other interviewees explained how by refusing requests such as the one in the example above, and including at times, criminal requests, they became a target and their career advancement was stalled.444

At other times, the targeting and stamping seems almost capricious. As a former career employee and government contractor explained, once you are stamped with a political affiliation it is long-lasting and will define your career opportunities:

you know that you are going to work with ones, and that with the others you will never work again. That’s how this market works. And it’s not only in one agency, it’s in all the agencies. … They put a mark on you that you cannot remove… Right now I am completely outside…. There’s no definition of professionalism, only by color (political affiliation) … That’s what’s so frustrating, you are trying to do a job and an executive wakes-up one morning thinking that you are from another tribe or color and puts a mark on you, and everyone starts looking at you as if you were a sick man, and then they liquidate you. … I use the word cancer… that is what fanaticism is… it clouds the mind and thoughts of the human beings that administer or work in government…445

Political stamping is an organizational mechanism that serves to sort employees into groups based on their political affiliation or perceived political affiliation. From the perspective of the informal patronage system, it then eases personnel decision-making processes (political-management of personnel), and helps meet responsibilities, such as fund-raising quotas assigned to the agency by the party, by identifying employees that can be asked for money or for other

444 Expressed by both career and trust employees.
445 Contractor / career employee.
This mark is then used, informally, to manage employees both formally--using the tools of the merit system--as in unscrewing, and informally, as in harassment and constructive dismissals. Given the illegality of many of these actions, the political structures within agencies help agency appointees to meet political responsibilities, while remaining distanced enough to be able to deny any wrongdoing or even knowledge about the activities. For example, an agency executive accused of political discrimination stated in her deposition “I do not know the political affiliation of any of my employees, it’s not a question that I ask.”

This executive was also questioned regarding allegations of her involvement in selling political raffle tickets to contractors (she was caught on tape talking about her plan on how to distribute $1,000 tickets among the agency regions). She emphatically denied her involvement in selling tickets to contractors, declaring that “political structures exist within the corporation for those purposes.” And that her remarks were recorded during a meeting she had with that “political structure.” In denying her involvement, she revealed something that is more important, the recognition that

446 For example, in a 1990s corruption scheme, the then Secretary of the Department of Education, Victor Fajardo, stated that the quota of money that he had to raise for the political party from the public employees of the Department was $50,000. Fajardo testified how the difficulties in meeting this quota led him to a more elaborate scheme of extortion and money laundering:

The money was supposed to be used to cover the fund-raising quota NPP [pro-Statehood Party] finance officials assigned to him as the head of the island’s largest agency, with 70,000 employees and a $2.2 billion budget, Fajardo said. The quota was set forth in meetings with other Cabinet members at the NPP’s main headquarters in San Juan.


447 Most interviewees (12) spoke about these money-collecting practices and requests for other types of political work.

there is a political structure within the corporation and that they work together. As a contractor explained, “they know how to play, the ones on top know how to play. The ones on the bottom and at a mid-level, are more stupid, they don’t have half a brain, they’ll ask you directly. But not the executive, the executive plays chess, and you can perceive it, every movement.”

3. Use of Merit Tools for Patronage Practices

The merit system tools are sufficiently manipulable to be used for patronage purposes and can effectively camouflage the illegitimacy of the processes. The merit-system tools are not only circumvented, they are actively used for discriminatory purposes. The political discrimination cases reflect how difficult it is for plaintiffs to prove discriminatory intent, especially to prove that defendants knew their political affiliation. Entry into the system was not directly challenged in the randomly-selected sample of political discrimination cases but was used to prove discriminatory intent where employees had been fired and substituted by now “insiders.”

What became increasingly evident as I reviewed the cases were the difficulties the courts confronted with a formal system so intertwined with the informal that upholding the law became very difficult because, at times, upholding the law meant protecting the informal patronage

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450 An example from a deposition from a defendant in a political discrimination, “I do not know the political affiliation of any of my employees; it’s not a question that I ask” (“Deposition of Zoimé Álvarez Rubio, Esq.,” Franco Figueroa, et al. vs. State Insurance Fund Corp., et al., Case 3:11-cv-01025-JAF, Document 99-2, Filed 08/07/12).

451 An example from a case that includes the surveillance factor, “Gascot testified that her affiliation was known at the CDA because she first arrived at the CDA as a special aide under an NPP administration, a trust position. Gascot recalled specifically that Hernández had direct knowledge of her affiliation. Gascot recalled an incident when she first started working as the director of the managerial school. Hernández, who Gascot identified as the “institutional brain” of the CDA, asked her to identify her political affiliation. By ‘institutional brain,’ Gascot understood Hernández to be an individual who “dedicate[s] themselves to identify[ing] the [political affiliation of the] people when they come in.” Hernández was ‘the person who knows everybody in there’” (Peguero-Moronta v. Santiago, 464 F.3d 29 (2006)).

system. In some cases, the courts lamented that the plaintiffs had not been able to prove their case, because the court knew, based on the patterns, that political discrimination had happened, but it had been so sophisticated and well executed that the court had been unable to rule in the plaintiffs’ favor. As a U.S. District Court judge wrote in his opinion on a political discrimination case involving the dismissal of 64 school managers, “At trial we perceived, not only from the evidence, but from the demeanor of defendants’ witnesses, that behind the reorganization there was secondary gain of a political nature...”:

...we are again confronted with the following predicament. It was stated in People v. Luciano, 83 D.P.R. 573, 582 (1961), that judges are not fools required to believe what ordinary citizens do not accept. We sense a discrete, well-planned and executed maneuver to do away with the School Managers, all of them New Progressive Party members. However, judges are bound to rule based upon the content of the case file and legal precedent. ... it is unfortunate that plaintiffs have failed to meet their established burden. Once again the Secretary has realized a secondary political gain and once again “[t]he stage was properly and legally set for the actions taken.”

In other cases, the courts had to make decisions about politically discriminatory actions against employees who had been illegally appointed—either illegally appointed and illegally fired or hired based on the political affiliation and fired because of it. In these cases, the “formal” merit system was used by defendants to determine the illegality of the appointments and as the basis of their dismissals. The intent, however, was not to uphold merit but to be able to get rid of the employees and further the informal system’s goals. At times the courts have explicitly corrected for this, recognizing that it was not the fault of the plaintiffs that they had been illegally hired, they didn’t even know it:

employees, who were all members of losing political party, knew nothing of their allegedly illegal appointments until after elections, they were messengers, drivers and typists unfamiliar with bureaucratic procedures, and the new administration substituted other drivers and clerical workers who were also not selected from list of eligibles and did not maintain minimum classification requirements for their positions. ... This forces the conclusion that the Commonwealth government does not view these regulations as

necessary to promote the merit principle. ...And if the Commonwealth is willing to ignore these regulations and requirements, this Court will not use them to penalize these workers.\footnote{Rosario Torres v. Hernandez Colon, 672 F. Supp. 639 (D.P.R. 1987) aff’d in part, rev’d in part, appeal dismissed sub nom. Rosario-Torres v. Hernandez-Colon, 889 F2d 314 (1st Cir. 1989). As affirmed in a case, “It has been said that “invidious political [party] discrimination is mainly directed against humble public employees or [those] with scarce resources” (Casiano v. Departamento de Educacion, 97 J.T.S. Case No. 33, at p. 718 (P.R. Sup.Ct. March 19, 1997) (Fuster–Berlingeri, J., dissenting from denial of certiorari) cited in Nieves-Villanueva v. Soto-Rivera (footnote 10, p.11)).}

Why, then, would party officials illegally appoint employees if they know of the high probability that these employees will be fired? Because it is in the parties’ interest—they can increase the number of “their” people in the career system or they can increase the employees’ loyalty by defending them once they are discriminated against. As one career employee explained “the way they see it is, ‘if they (opposition party) discriminates against my people and I offer them (the discriminated employees) support, offer them aid, they will be firmly with me, even more loyal to me,’ you see?”\footnote{Career employee.} A former federal court employee considers this a racket of the political parties, a costly one, with every outgoing administration illegally appointing thousands of employees, who are then illegally fired by the incoming administration and defended in political discrimination cases by lawyers with ties to the political parties.\footnote{Both the pro-commonwealth and the pro-statehood parties have organized lawyer committees-- pro-statehood lawyers’ committee and pro-commonwealth lawyers’ committee-- similar to the public servants’ committees.} As a matter of course, after elections one can find announcements in the newspapers as well as in social media, of political organizations of public employees and political parties, encouraging employees who are being politically discriminated to contact them, and putting at legal aid at their disposition. For example, in the Facebook page of one of the public employees’ political groups, the group posted the following post in the 2012 post-election period,

Pro-statehood public servant: remember that we are here to help you, support you, and guide you. If you are being persecuted, if you have been stripped of your responsibilities,
or you have been fired, call us or write to our inbox.\textsuperscript{457}

The political structures within public agencies and corporations help fuel the interpersonal dynamics sustaining political discrimination by facilitating political discrimination through myriad ways, including political surveillance, lists, informal information system—these groups are an extension of the political party within agencies. I will return to this idea in the next chapter, when I discuss political discrimination as a collective experience.

4. Conclusion

The contest for control between the parties underlie and result in the patterns of personnel management described in these chapters. The pursuit of the political parties for the control of the career system at all levels, leads to the systematic use or abuse of personnel systems for discriminatory purposes—political discrimination serves the purpose of acquiring or maintaining control. In order for the informal network to function, political parties need/aspire for someone politically trusted at every level, in every office—political affiliation establishes the basis for trust and the basis for the informal network. This informal trust network is important both when the party is in power as well as when the party is out of power.

What do employees learn from these experiences? They learn to expect privilege or discrimination depending on their status, \textit{and} they learn to favor and to discriminate based on political affiliation. As a career employee explained,

\begin{quote}
that they fire you for politics is nothing! If you entered because of politics, kept your position because of politics, get moved to positions because of politics, if you breathe politics, and you are fired because of it, oh well… in four years the others will get fired. Everyone does it like this, this world is like this. And as this continues it ends up being
\end{quote}

\textsuperscript{457} “Servidor Público Estadista, recuerda que estamos para ayudarte, apoyarte y orientarte, si estás siendo perseguido, te han quitado funciones y has sido despedido, llama o escribenos por aquí al inbox” (Servidores Públicos Estadistas, Facebook Post, July 16, 2013 at 6:16am, \url{https://www.facebook.com/servidorespublicos.puertorico/photos/a.868955773144502.1073741828.86895572981173/868961999810546/?type=1}); “Denuncian uso de fondos públicos para perseguir servidores públicos,” \textit{El Vocero}, April 13, 2013, \url{https://es-la.facebook.com/voceropr/posts/denuncian-uso-de-fondos-p%C3%BAblicos-para-perseguir-servidores-p%C3%BAblicos-estadistas/469355079801806/}.
assimilated by even those that are watching from the bleachers and should be holding government officials accountable.

Employees start thinking that merit does not exist, and it was often not mentioned at all by interviewees. When I asked, “what about all the civil service laws? What about merit?” I received definitive responses such as: “merit does not exist, only political partisanship, and not even that! Cronyism! Cronyism!”; “merit? Pfff!!! Hahah”; “merit? I don’t know where we left merit…” As another career expressed, “personnel management is a resource for people in power to do whatever they want with other people.” Nonetheless, given that not all administrators are as political--- this is a learning process that can take years.

The next chapter details the experience of regaining an insider status when one’s party wins elections, after having experienced the outsider status while one’s party was out of power. Experiences during the outsider status come to define individual and group expectations and actions, as well as the way they see “others.” Employees who entered with weak ties to political parties and that initially report not caring about others’ political affiliations, transition to more politicized identities, as they get acculturated to the dominant logic within the public bureaucracy.
Chapter 5. From Outsiders to Insiders

The previous chapter described the changes to employees’ work conditions, including the experience of political discrimination, when they go from insiders to outsiders after their party (or assumed party) loses an election. This change of status often involves the worsening of employment conditions and is the phase during which political discrimination is most likely to be experienced at the individual and at the collective level. This chapter describes how the cycle continues as employees again become insiders when their party is in power once more and suggests how the outsider experience reinforces the patronage system. When employees cycle back into an insider position--and because of the experience of the outsider status--they want and expect different things than employees entering public service initially—in other words, they have become socialized.

The role of negative emotions, such as desire for revenge and distrust, in the reproduction of patronage practices is particularly important because the patronage system does not rely exclusively on the exchange of tangibles to sustain it, but also on emotions, such as hope and desire for vengeance. There is hope in the case of employees working for their party with the expectation of receiving benefits when the party is in power. And desire for revancha or

458 Chubb, Patronage, Power and Poverty in Southern Italy.
vengeance—in the case of employees who mobilize to do harm to those of their out-group, or to benefit their in-group to get back at their out-group, or to punish them. In this setting, it is not only the giving of benefits that bind people together, but the taking away. Experiencing political discrimination contributes to the politicization of those that experience discrimination, and enables alternative cycles, such as tit-for-tat behaviors, once the “outsiders” are again in power.

By focusing on participants’ experience, specifically the experience of the cycling back to an insider status after experiencing discrimination as an outsider, this chapter explores alternative mechanisms that support the perpetuation of the patronage system, in particular as it relates to the process of crystallization of political identity and acculturation to and normalization of the organizational culture. Experiencing the change from an insider to an outsider status and the withdrawal of trust and negative work conditions that this entails, affects the way in which employees relate to one another. Experiencing the outsider status, reinforces political affiliation as the basis for group formation and identification, “ours” (“los nuestros”) versus “yours” (“los tuyos”), and provides a rationale and justification for both favoritism and politically discriminatory actions based on political affiliation (real or perceived).

1. Political Discrimination: A Collective Experience

Political discrimination is not only experienced individually, it is experienced collectively. Political discrimination not only results in loss of productivity, loss of income, and of emotional stability, but has enduring effects in the way that employees relate to one another—it shapes their expectations, transforms their dynamics, their beliefs about each other, it separates them into groups, reinforces political affiliation as the basis for group formation and identification, and provides them with a rationale and justifications for politically discriminatory actions towards those identified as “others.” Conceptions of fairness and justice in this organizational culture
become subordinate to particularistic, group-related considerations.

When employees witness how those from their group are treated, or they are part of the group that is collectively discriminated against, it becomes an us-them situation, as expressed by the spokesperson for the Pro-Statehood Public Servants Committee: “Remember, we are living under a government that is persecuting pro-stateholders. ...You can investigate each of the agencies... they are being fired, trampled on, humiliated...” These discriminatory behaviors create collective responses, including collective demands, when back in a position to make demands; when your administration is again in power, and you become again an insider. It becomes factional.

For example, in one court case, after being out of power for eight years, the NPP campaign in the Municipality of Santa Isabel “continuously played and/or ran a musical jingle which stated “You are all going out,” referring to the ousting of the PDP municipal employees. After Questell [NPP candidate] won the election in November 2004, the above-mentioned “jingle” continued to be played throughout Santa Isabel... when news of the imminent dismissals of the PDP career employees spread... a group of PDP affiliates and employees, including many of the plaintiffs in this case, gathered in front of City Hall to protest the imminent dismissals. While the multitude gathered outside of City Hall, several of the PNP employees that remained working inside laughed at and mocked the crowd outside.”

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460 Febus-Rodriguez v. Questell-Alvarado, 660 F.Supp.2d 157 (2009). The politically charged environment is described in both agencies and municipalities. In 2005, 94 percent of Municipalities had 757 ongoing political discrimination cases (Informe Positivo P. de la C. 1359). From 2003-2009 Municipal governments paid a total of $32,384,580.00 for political discrimination cases, but this is an underestimate given that amounts paid by defendants in cases that are settled are not public (estimates based on PR Office of the Comptroller reports, Cordero-Nieves et al., El Discrimen Político en el Empleo Público).
insiders and their expectations regarding what should be done with outsiders.

As described by an interviewee,

I think that in government there is a separation of friendships based on that (political affiliation), many of the personal relationships are based on whether or not we are of the same party, it is a topic of conversation, it is the subject of fights, it is a matter for celebration... like children in school when they fight over sports or for some other reason. Well also, like "I'm going to be better off than you because this party is in power." Or "wait until you lose so you can see what we're going to do to you", that kind of thing. 461

Local media consistently refer to tribes and tribalism when describing the main political parties and their dynamics. Interviewees described the political tension among groups, with people “out for blood,” threatening and taunting members of the opposition. They described how political groups within agencies assemble lists of people to be benefitted—including how career and trust positions will be distributed. 462

The political structures within agencies actively and directly encourage and manipulate these interpersonal partisan dynamics to their advantage—the cycle of emotions that I describe in this dissertation is a manifestation of the underlying dynamics of the parties vying for maximum control over the bureaucracy. Sorting people based on their political affiliation, through the formal and informal organizational mechanisms discussed in Chapters 3 and 4 encourage group formation and group identification. For example, file audits that are used to identify employees hired by the opposition, target them not as individuals but as members of a group (real or perceived). Some cases have hundreds of plaintiffs, who were targeted as a group (e.g. based on date of entry)—and suffered loss of employment or other negative personnel actions, collectively. The political stamp, which is informally used to manage employees, is also a tool that divides employees based on their political affiliation. The lists divide employees into those

461 Career employee / political appointee.
462 Career employees, trust employees, political appointees.
to be benefitted or to be punished. Reflecting the groupness that these management practices create-- one interviewee refers to herself and colleagues that were recruited during the same cuatrienio (political administration) as the “Class of 2004”—by this, she is referring to her political mark as a pro-commonwealth affiliate, because of her date of entry into government. Individuals that share the same political mark move through the insider-outsider cycle together—for example, one interviewee who was completely marginalized (with no assigned tasks whatsoever) told me how employees that were going through these experiences together, would seek solace in each other. Some of the forms of political discrimination described in Chapter 4, especially the ones involving harassment, humiliations, and extreme marginalization--- are incredibly distressing. Employees feel embarrassed, humiliated, depressed, anxious. These shared experiences—created by the control-seeking behaviors of party operatives-- also reinforce group formation and identification.

2. “Revancha”—rematch, revenge

Before a change in administration, employees who have gone through the cycle before and that are transitioning from an insider to an outsider status, expect to be, at a minimum, sidelined or not benefitted by the new administration. Some interviewees express feeling outright dread at the upcoming change, “not wanting to go through it (political discrimination) again,” and “bracing themselves for the worst… it’s the same movie with different protagonists.” Employees transitioning to an insider status, await the administration change hopeful, with the expectation of better working conditions, increased access to decision-makers, promotions, flexibility, among other positive changes. The accumulated experiences from the insider and the outsider status, especially the experience of political discrimination, result in political affiliation being used as an

463 Political appointee / career employee / contractor.
initial screening for distinguishing among those that one can trust or not trust, and this trust/distrust becomes the basis for favoritism or discrimination.

Interviewees observed marked changes in attitudes among politicized employees depending on their insider or outsider status. On the one hand, employees who were unreliable or dragged their feet while outsiders, become good employees when their political party is in power.

But it’s not only that they act better or are more energized. Depending on their experiences while outsiders, some employees expect pay-back for the poor treatment that they received; they engage-in or demand revenge-driven behaviors, which are referred to as “revancha” (which literally means “re-match”). One career employee described revancha as a daily occurrence, “our daily bread.” Demands for revancha are especially strong in the period immediately following a change in administration. In the words of a former political appointee, “many people want to see blood. When I got to the agency, you can’t imagine the list of people that they had for me to knock their heads off! This is how this works all the time. … They (employees) want to get back at the others, for what the others did to them. I am not exempt from it, we all fall into it sometimes.”

Decision-makers often find themselves in a difficult situation, having to respond to the multiplicity of demands, and having to be wary about those employees who might be intentionally wanting to obstruct the incoming administration’s work or that cross their arms because it’s “the others’ turn to work.”

One decision-maker tried to balance the requests for justice by factoring-in merit, “among those in the list, I would look for the employee with the poorest performance,” to take

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464 Career employee / political appointee.
465 Career employee / political appointee.
adverse personnel actions. Even though some interviewees felt very uncomfortable with requests for adverse actions against personnel as well as with requests to favor totally unqualified party loyalists, they found themselves in a catch-22, “if you don’t give-in to some of their demands, the informal system will come after you,” and another former political appointee explained, “remember, trust can be withdrawn,” and when political appointees lose “trust” from the superiors, they might lose their jobs.

A trust employee referred to these dynamics as “politics with persons,” and more of a group phenomenon, as he related his difficulty managing a department where only 15 out of a staff of 137 were “insiders” (aligned with his administration). After more than eight years as “outsiders,” these 15 employees wanted revenge. They felt they had been discriminated and persecuted by the other group, and expected that with the change in government, they would see the now “outsiders” be punished and mistreated as they felt they had been. This imbalance in political affiliation among employees, is reflective of the amount of time a certain administration was in power. It was common to find statements in the political discrimination cases about the percentage breakdown of the workforce along party lines.

An incoming administration might find a “majority of employees that militate for the opposition party… a can of worms… people that are instructed to drag their feet and block” the incoming administration’s work. Noting two instances of defendants that had been plaintiffs in prior political discrimination cases, Cordero-Nieves, et al., refer to this as the “political discrimination syndrome,” in which an employee that is politically discriminated against, goes

466 Political appointee.
467 “At the time of the audit, the Bank had just over 180 employees, of whom about 80% were NPP members and about 20% were PDP members,” (Sanchez-Lopez v. Fuentes-Pujols, 375 F.3d 121, 128 (1st Cir. 2004)).
468 Career employee / political appointee.
on to politically discriminate against others, once his political party is in power.\textsuperscript{469} In interviewees’ accounts, these reactive behaviors of revancha were pervasive.

One interviewee described the anger that accompanied this type of demand after a change in administration, “many people had this anger... ‘you \textit{have} to investigate this person’, ‘you \textit{have} to get rid of them.’”\textsuperscript{470} This train of thought was repeated over and over in conversations. Expressions such as “\textit{deja que baje},” (“wait until she descends”) are both literal and figurative—descending from the higher floors where the most important offices are, and figuratively, as when she is stripped of her power. “\textit{La están esperando}” (“they are waiting for her”) refers to the thirst of those waiting for the person to be in a position in which they can pay for their behavior, when the person is stripped of her/his political appointment or political protection and is back in the trenches with the employees she/he mistreated.\textsuperscript{471} There are repeated references to how others behaved while in power (while insiders), to justify interviewees’ own discriminatory behaviors or to justify what happened to “them,” when the power structure changed, “we watched you rise, we’ll see you fall.” For example, while describing someone that had become very abusive when an insider, an interviewee said “I thought ‘she will pay for it,’ and she did... God is up there.”\textsuperscript{472}

\textsuperscript{469} Cordero-Nieves et al., \textit{El Discrimen Político en el Empleo Público}, 136.
\textsuperscript{470} Career employee.
\textsuperscript{471} The day after the 2016 gubernatorial elections, employees at one of the Department of the Family’s regional offices celebrated that the Regional Director was going to be fired. The Regional Director had been appointed by the outgoing (PDP) administration and recommended by a PDP mayor. The banner which was installed at the regional office says: “Your reign is over, little queen. The abuse and the crown are done” (“Empleados Departamento de la Familia en #Ponce Celebran Despedida de Directora Regional,” \textit{Noticias de Ponce}, Facebook Post, Nov. 9, 2016):

\begin{center}
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\textsuperscript{472} Career employee.
Desire for revenge was not always tacitly expressed but was given away by expressions of interviewees’ expectations of their own party. “They (referring to the other party) have no qualms, have no fear, they just come in and sweep... this party is too fearful of public opinion...”; “there were about a 1,000 illegal appointments in the agency after elections, and they just left them there!” I heard frustration when revenge was not carried through by those with power, “they should have ripped their heads-off!” These expectations were also reflected in court cases, for example, in the Puerto Rico Rules and Permits Administration there was a newsletter, Vendetta, published by pro-statehood employees that referred to pro-commonwealth employees “as bacteria to be exterminated.” While in the Puerto Rico State Insurance Fund, a group of pro-statehood employees “yelled at PDP [pro-commonwealth] employees that ‘you are going out’ and ‘this is revenge for all that you fired.’” There were also expressions of satisfaction of seeing the “others” get “what they deserved.” The “black lists” discussed in Chapter 4, are lists of people to take negative actions against. Sometimes this is simply based on the political affiliation or perceived political affiliation of the employees and is a more blanket targeting of the “others” which serve to meet collective demands for revenge. At other times, the revenge-driven behavior is more direct, it is a way to settle past scores for specific actions of those employees who are targeted-- employees who are targeted become more political, and the more political that employees become, the more likely they are to subsequently be targeted for political discriminatory actions—individuals and groups become locked-in in these cycles of punishing and being punished.

In cases and interviews, the outsider experience (e.g. witnessing insiders getting

473 Career employee.
474 From interviews to (5) career and trust employees, and informal conversations.
benefits), subsequently shaped expectations for those transitioning from an outsider to insider status. Desire for vengeance is more pronounced when harassment/or more extreme discrimination was experienced when an outsider—in these cases, one sees very heightened emotions against the “others.”

When individuals who have been the victims of political discrimination or those that are considered political “fanatics” rise to decision-making positions after a change in political administration, the agency’s personnel policy can turn, as described in one of the political discrimination cases, into a “policy of political discrimination,” with highly charged political environments, and very aggressive actions against outsiders. For example, one of the interviewees, a defendant in a political discrimination case, who had been stripped of all his responsibilities during a four-year period, said that the experience “definitely was what took me to that political dark side... that I had not felt before.... they messed with my people, so I want to destroy them, bottom line. And I don’t feel bad about it.” And he did manage to fire all the employees that he held responsible for the harm suffered by him and his “people”.

Another interviewee, who was harassed and eventually fired because of her perceived political affiliation, expressed that “out of anger” she got into politics: “They thought I was (from the opposition party); so now I am.” Others were left with an enduring sense of distrust towards members of the opposition party. For these interviewees, there was the expectation of discrimination when in an outsider status, “I would be wary of my new supervisors... I thought they would treat me the same way,” “I don’t want to go through this again,” “you don’t

478 Political appointee / career employee.
479 Career employee.
480 Career employee.
When the majority of interviewees entered public service, they did so with weakly identified partisan ties, or no partisanship preferences. Even employees who were clearly identified with a political party when they entered public employment felt that politics had no place in the workplace, it was a private matter, they didn’t care about others’ political affiliation, and they expressed a willingness to work with people regardless of which party they belonged to. Nonetheless, all interviewees were “stamped” with a political affiliation and were managed under this assumption. Thirteen of the interviewees disclosed having suffered extreme political harassment and discrimination throughout their time in government. Of these, only 3 took legal action. Even in this relatively small sample, at least 3 of the interviewees were themselves at some point in their careers defendants in political discrimination cases. All the interviewees were politically managed—-their status (not necessarily their positions) changing in tandem with their political party’s in-power or out-of-power status. They expressed feeling distrusted based on their perceived or actual political affiliation when in an outsider status— having a decreased work load during those periods, less access to decision-makers, and generally less participation and opportunities for job growth (e.g. would be overlooked for promotions). One interviewee, a career employee, recalled a conversation with one of her supervisors, “look,” he said, “I recommended you for a merit increase in salary, but they told me, ‘Not to her. Not to her. We will give it to any other person, but not to that person, because that person is not from our party. That person does not enjoy our trust.’” And another career employee with over thirty-years of

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481 Career employee.
482 Or stamped with non-affiliation, in the case of the two employees that remained neutral. As one of these two employees expressed, “the ones and the others would try to get rid of me” (career employee).
483 “No goza de nuestra confianza” -- career employee.
experience, “they give them ‘pasos’ (merit raises) when it’s their party that’s in power.”⁴⁸⁴ In all the years that this employee had been working in government, she had never seen a person promoted that was not of the same “color” (in reference to party color) than the person making the decision. Another employee narrated how in 12 years, when the opposition party was in power, she did not get a single raise, “when there was money, they would give it to those who were in power (referring to employees affiliated with the political party in power).” The political factor is in every decision.

Most interviewees in decision-making positions remembered how when they started, they did not act politically in hiring or personnel management decisions, they did not care “who was who”—but experience taught them that this was not a safe course of action to take—employees would not be loyal if they were not from the same political party, their own party members would start distrusting them if they favored members of the other party, and they could be punished right away (e.g. withdrawal of trust) or in the long-run (e.g. not having the opportunity to serve in a trust position).

All decision-makers in the sample started taking into account political affiliation in their personnel management decisions—some flat out stated that they would never hire employees from the opposition, some admitted to using their power to go after people who had wronged them or their people, others learned to balance the requests and pressure coming from the informal system and would agree to hires or personnel actions within certain boundaries—would not comply with requests that would place them at risk of being sued for political discrimination; would hire only the best of the politically-connected employees; or fire only the worst of the opposition’s employees.

⁴⁸⁴ Career employee.
Politically motivated actions against outsiders (e.g. political harassment) triggered cycles that were qualitatively different from the cycles established by the insider experience. My dissertation suggests that experiencing negative actions while an outsider, leads to increased politicization of employees, leading employees to develop or reinforce negative attitudes towards the group in power, while developing or reinforcing identification with an alternative group; it aligns the interests of the outsiders with an opposing faction and rationalizes negative actions against their out-group. These findings extend Oliveros’ finding of the indirect effect that witnessing the changes of political opponents has on aligning the interests of the insiders, by focusing on the direct effects that the experience has on the individual that is discriminated against and how this contributes to maintaining the system.

Interviewees referred to these dynamics as a “cancer,” that has reached metastatic levels, with “agencies that are completely eaten up by politics,” a “system that rewards incompetence, mediocrity, politicking,” interviewees consider this an irreversible and worsening situation, “a trap that we built for ourselves and cannot get out of.” And that has become the norm, “this is a problem that we have adapted to and gotten used to… it’s like when you live in a noisy area, you stop hearing the noise, or when you live next to a mangrove, you stop feeling its stink. We have come to see this as normal, but that doesn’t mean that there is no noise or that it doesn’t stink.”

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485 “A Working Machine.”
486 Contractor / career employee.
487 Career employee / political appointee.
488 Career employee / political appointee.
As another career employee expressed, “politics is not bad, politicking is. It corrupts. It makes you disregard the value of people, of human beings. It is the worst thing that can happen to a society.”

3. Conclusion

This chapter described how the cycle continued as employees again became insiders when their party regained power. This chapter suggests how the outsider experience reinforces the patronage system differently from how it is reinforced through the insider experience (e.g. based on loyalty or reciprocity). This chapter shows how when employees cycle back into an insider position—especially after experiencing highly politicized environments as outsiders—theyir expectations as well as their level of politicization are different from when they initially entered public service.

Despite the extensive use of palas—or politically connected persons—to gain entry into public employment, at the time of entry into public service, the majority of the interviewees had weak direct ties to political parties or no clear political affiliation. And even in the case of those who were clearly identified prior to entry into the system, interviewees uniformly expressed that, at the time of entry, they didn’t care “who was who” politically, a willingness to work with anyone regardless of political affiliation, and a belief that political affiliation was a private matter and should not take precedence over qualifications and performance. Nonetheless, even those who actively resisted were “stamped” with a political affiliation and managed based on this stamp or assumption regarding their political affiliation.

The stamp can be based on the date of entry of public employees into the system or on the political affiliation of their “pala.” It can also be based on the way they reacted in varied

489 HR Director / career employee.
situations, such as who they interacted with or befriended in the workplace, or the employees’ response to requests for contributions to the political party or for political work. All interviewees, including the ones that actively attempted to remain neutral, at some time ceded to the political pressures.

As one interviewee explained, “it’s frustrating, because you are a professional, and try to enter without political ends, and after all you end up defining yourself politically, because you have no option. They force you to. … And once defined, you know you will work with ones and will never work again with the others. … Because they put a mark on you that you cannot remove.” Additionally, experiencing political discrimination, especially the most extreme (being made invisible, harassed, demoted, fired), resulted in feelings of distrust, anger, and desire for vengeance, which sustain and fuel patronage practices, specially of the discriminatory type.

Experiencing the change in status/the status drop, when they had, sometimes unknowingly been enjoying an insider status—shaped employee expectations, their dynamics and their beliefs about each other, not as individuals, but as individuals belonging to a specific group—one that is to be distrusted or not trusted to the same extent based on political affiliation. In this formally meritocratic environment, conceptions of organizational justice and fairness respond to the informal belief system; to particularistic and group-related considerations. As political administrations alternate, employees are confronted with the different political scenarios, and what these represent for them in terms of experiencing an insider or outsider status, their political identities become crystallized, and they learn to benefit and punish and to expect to be benefited or punished depending on political affiliation or perceived political

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490 Contractor / career employee.
Partisanship becomes the basis for group formation and identification, leading to favoritism and trust towards the in-group and to discriminatory actions and distrust towards the out-group. The range of emotion-based responses to political discriminatory experiences (becoming more political, increased distrust toward out-group, desire for revenge) would be left out of an analysis that only looked at insider-dynamics. Nonetheless, these emotions are a crucial driver in the reproduction of patronage practices that allows for the continuation of patronages practices even in environments of scarcity—the informal system of patronage does not only rely on the exchange of tangibles (jobs for political support), but extensively relies on the increased politicization of employees and distrust and revenge-driven behaviors to continue. This chapter shows how taking away becomes as binding as the giving of benefits, enabling alternative cycles—based on distrust or revancha—that sustain the informal patronage system.

When I asked one of the interviewees, who had suffered political discrimination, “who benefits from this system?”, she offered a perplexing answer: “everyone does.” And she further explained “in four years, it’s our turn.” But not everyone benefits, in the next, and final, chapter, I address some of the consequences of the political management and politicization of the official functions of public bureaucrats—of having public bureaucrats who respond to a party or to external elements (e.g. political operatives), rather than to the people of Puerto Rico.

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491 In the cases of nationalist or pro-independence individuals, whose parties have never been in power, the political affiliation the employee was stamped with, and that was used to favor or discriminate, was the one these interviewees came to identify with in the sense of expectations.

492 Career employee / political appointee.
Chapter 6: Conclusion

How does an informal patronage system work within a highly regulated merit system? Within the very structures that were put in place to control it? What are the mechanisms that keep patronage in place? How do public employees experience and make sense of this dual system? These are the main questions that motivated this dissertation. Based on the analysis of 29 in-depth interviews with 23 public sector employees, participant observation, the analysis of 50 political discrimination cases selected at random, and docket research of an additional 12 political discrimination cases, this dissertation shows how a patronage system continues and works within a formally merit-based civil service system.

In Chapter 1, I discussed the longstanding practices of manipulating the career system have resulted in a politicized bureaucracy with a workforce that is largely divided along party lines and of cohorts that collectively experience the insider and outsider status as their parties’ cycle in and out of power—a cyclical experience that ultimately results in employees becoming more political. This dissertation is organized around the experience of public employees as they go through repetitive cycles of being benefited or punished based on their real or perceived political affiliation. I describe a system that takes into account both professional and political
qualifications or personal connections (and sometimes only the latter), and that forces individuals to align themselves to a party in order to advance professionally.

My research suggests that experiencing negative actions after transitioning to an outsider status, leads to increased politicization of employees. The experience creates or reinforces negative attitudes towards the group in power—and given the group dynamics involved (group-based discrimination)—reinforces identification with the members of the group in the outsider status. Experiencing political discrimination has lasting effects in the way that employees related to each other—separating them into groups and reinforcing group formation and identification along party lines. These dynamics are continually reinforced and encouraged by the informal political structures.

My research shows how patronage practices are normalized and reinforced as public employees go through cycles of being benefited or punished by the system and suggests that the cyclical, cumulative, experience is in itself a mechanism that sustains patronage. This builds on and expands the scope of current research on patronage systems which focus on insider-dynamics.

In Chapter 3, I described the initial phase of the model, the experience of entry into government employment and the ways in which political affiliation is systematically used in hiring and in other personnel processes—even unbeknownst to employees. This initial phase is important given the weight that the conditions under which employees enter have on their subsequent career trajectory (“el sello”/political stamp). Suppositions are made about employees’ political affiliation, based on their date of entry, and this, in turn, affects how they are treated after a change in administration. Studying this phase is also necessary to understand the transition between the insider and outsider experience, to understand the contrast of the status,
and to understand the extent of employees’ loss. But, as we see in the other chapters, entry into the system based on political qualifications is not the most determinant phase in terms of politicizing employees, as many of them don’t even fully realize the extent to which these informal qualifications were taken into account. The political management of employees—being benefited or not based on their political affiliation—provides a continual reinforcement to a politicized identity.

In Chapter 4, I described the organizational mechanisms of political discrimination and detailed the subjective experience of employees transitioning from an insider to an outsider status and the experience of different modalities of political discrimination—ranging from distrust to being politically harassed or dismissed. These experiences were in turn determinant in shaping employees’ subsequent expectations regarding how they expected to be treated based on which party was in power. As described in Chapter 5, the experience of political discrimination leads to an us vs. them mentality based on political affiliation that drives employees to act more politically. When employees return to an insider status after undergoing an outsider status (particularly those who underwent severe political discriminatory actions)—they want and demand different things; some demand to be benefited, others to be avenged. In this informal patronage system, the giving of benefits is as binding as the taking away. At the individual level, the role of emotions such as revenge and distrust is important in the reproduction of patronage practices. At the organizational level, these patterns are actively encouraged and manipulated by the political structures operating within government agencies.

The cycle of emotions occurs against the backdrop of the underlying informal power structures that shape the experience of patronage. I described the political committees within public agencies and their involvement and influence over personnel processes, the committees’
surveillance activities and their embeddedness in the formal agency structures. These groups draw their power from their position as highly valued operatives within the party structures, and actively promote the dynamics that maintain employees locked into us versus them dynamics. The case of Puerto Rico shows how through these political-discriminatory dynamics, political parties are able to gain control over—and extract resources from—public employees and the bureaucracy.

1. **Broader Impacts**

This project proposes a different way of modeling patronage, which has implications for how patronage is studied and for how it is addressed in practice, making both a theoretical and an empirical contribution to the field. Modeling patronage as a cycle, and focusing on both the insider and outsider experience, yields a much more complex set of dynamics for understanding how patronage is sustained, than focusing on either the insider or the outsider experience. Additionally, it suggests that *public employees’ experience of patronage as a cycle* must be addressed if we are to have any chance of success at decreasing these practices. Addressing the experience and disrupting the cycle, will necessitate active engagement with the informal and formal political structures, and in this case of normalized and systemic patronage, the citizenry will also have to be engaged in any meaningful effort to address these long-standing and engrained practices.

Expanding the scope of patronage studies from a focus on insider dynamics to incorporate insider-outsider dynamics not only yields different insights into the mechanisms that sustain patronage—it also helps to understand how these personnel practices are related to other government failures and how they facilitate other types of corruption.
a. Beyond the Patronage Cycle: The Rhythm of Corruption

The repercussions of the practices described in this dissertation go well beyond the direct effects that it has on public bureaucrats: it affects the way in which they perform their official functions, and thus, the administration and continuity of programs and implementation of policies. The cyclical patronage dynamics are reflected in, and help understand, other forms of corruption and government failure—there is a particular rhythm that allows for the identification of times that are particularly neuralgic—such as electoral years, months before and after elections, changes in political administration—when there are increased personnel transactions that might contribute to government’s decreased capacity to function or for laying the foundation of other types of corruption.

The analysis of two recent government failures in Puerto Rico: (1) the administrative and political order of erasing thousands of uninvestigated child abuse referrals prior to an electoral event; and (2) a grand-scale corruption case involving a powerful political fundraiser and multiple government agencies—shows how understanding the patterns in personnel management provides a framework to analyze and understand other types of corruption or government failures—these often arise, follow, or are facilitated by the informal patronage system.

The case of the Department of the Family, illustrates how the patterns of political discrimination contribute to serious government failures. It illustrates, first, the loss of organizational capacity due to the marginalization of experienced employees based on their political affiliation, and, second, how employees that “owed themselves” to the Secretary of the Department of the Family or to the party, complied with an illegal order. This case follows the patterns of political discrimination and political favoritism discussed in the previous chapters. The political discrimination cases at the Department of the Family during this period help to
understand what happened and why.

The second case, a grand scale corruption case (Operation Spoils of War), further highlights the vulnerability of the personnel system to external influences, in this case, to an individual that because of his fundraising abilities and political connections could strategically place individuals in specific government positions for his personal enrichment.

b. *The Case of the Department of the Family 2009-2013: “They owed themselves to the Secretary”*

Prior to the 2012 elections and facing a mounting number of child abuse referrals, functionaries from the Department of the Family closed and erased thousands of child abuse referrals that had not been investigated. Among the cases that were closed without agency action were referrals for physical abuse, neglect, subhuman conditions, and sexual abuse; with some of the referrals involving children under six.

A senatorial investigation determined that erasing the referrals had been an intentional scheme to conceal the Department’s statistics; punishable offenses under the Commonwealth’s penal code.

Given this regrettable situation, we can infer that Ex Secretary Irizarry knew about the scheme and that it was orchestrated from her office, where instructions were imparted for proceeding with the administrative closure of the referrals. This had the ulterior motive of making it appear as if the Department and Administration for Children and Families didn’t have thousands of unattended referrals, that we now know existed, and attempt to conceal the reality, even during the Transition Hearings of the governments… Likewise, it was evidenced by documentary and testimonial evidence that this scheme was orchestrated from the highest spheres of the Department and the Administration for Children and Families, and was put in effect by the highest-level officials in the institutional hierarchy and by the closest personnel to the ex-Secretary.493

There were virtually no consequences for most of the employees involved. The Ex Secretary was

rewarded with contracts with the Municipality of Aguadilla. As a government employee explained—“they (the party) had to pay her back somehow, she publicly took the heat for the party, she had to be compensated.” How did this happen? I argue that the cyclical patterns of political management of public employees at the Department of the Family were at the root of this scheme. Because of politically-motivated managerial practices, the agency lost the capacity to adequately respond to its ministerial duties.

The tenure of Yanitsia Irizarry as Secretary of the Puerto Rico Department of the Family was considered hyper-political. Extreme political-based distrust led to the firing or marginalizing of career employees who were identified with the opposition party, including employees who had key roles in the management of child abuse referrals, including an entire layer of career supervisory employees. The politically-motivated marginalizing or firing of social workers in specialized supervisory positions disarticulated the administrative capacity of the regions with the highest incidence of maltreatment, and their capacity to monitor, plan, and implement the necessary strategies to respond to the referrals that were received daily and that were accumulating.

The P.R. Senate report details how employees who resisted the order to erase uninvestigated referrals were pressured and threatened. A former employee explained that if an employee resisted, they would just get someone else to do it. I asked, “why would a social worker follow-through with such a directive?” The interviewee replied, these employees “owed themselves to the Secretary,” they had gotten their jobs through her and they felt their future

494 From 2012 until at least 2017, per the P.R. Office of the Comptroller’s contract registry (https://www.ocpr.gov.pr/registros/consulta-de-registro-de-contratos/).
495 “Ponencia para el Senado, Resolución Número Nueve para Investigar el Departamento de la Familia en Relación a los Mecanismos Utilizados en el Manejo de Querellas de Maltrato de Menores y de Personas de Edad Avanzada.” 2013, Hon. Idalia Colón Rondón, Secretaria Departamento de la Familia, Lcda. Vanessa Pintado Rodríguez, Administradora, Administración de Familias y Niños.
opportunities (and their families’) depended on maintaining trust.

The case of the Department of the Family closely follows the patterns identified in the political discrimination cases and interviews—it follows or develops along the insider-outsider cycle. Irizarry’s administration identified and targeted outsiders, and in the process lost administrative capacity. After being in power for nearly 4 years, and before the 2012 elections, Irizarry loyalists were screwed-into career positions. After the change in political administration, these employees, became outsiders and were fired because of an internal reorganization of the Department under the incoming administration. These employees sued for political discrimination, alleging that the reorganization responded to political rather than to programmatic reasons—the case was ultimately settled.496

Many of the personnel actions during 2009-2013, which were described by interviewees as “normal,” as the “modus operandi,” and as “standard operating procedures,” proved to have terrible consequences for the agency’s ability to respond to child abuse cases.

c. Operation Spoils of War (Botín de Guerra), 2012-2016

November 13, 2012.

‘WE WON’ read an email message sent from Xavier González to Anaudi, a powerful political fundraiser (“recaudador”), after the 2012 general elections in the Commonwealth of Puerto Rico. The attachment to this email-- his resume and a letter to the Governor. Because of Anaudi’s influence, Xavier was hired as Administrator to the P.R. House of Representatives, and later awarded a contract to one of several companies created by Anaudi after the elections.

Anaudi the “recaudador,” the businessman, was able to have politicians and government officials respond to him, through the strategic placement of individuals in key positions within

government and the use of bribes; he was able to benefit from three different corruption schemes encompassing at least ten government institutions.\textsuperscript{497} In order to establish the large-scale bribery scam that he was indicted for, now-convict Hernández Pérez relied on the employees that “owed” him their public employments:

Many of the individuals recommended by Hernández Pérez whom obtained the jobs, ultimately had the authority to approve or authorize contracts, purchase orders, and other financial obligations on behalf of their respective agencies, departments of public corporations, and in return for the recommendations for employment, and/or other things of value, authorized contracts, purchase orders, proposals and payments on behalf of the co-conspirators and their corporations.\textsuperscript{498}

While political groups operating in government agencies are estimated to raise from 10-15 percent of the total funds used in political campaigns\textsuperscript{499}; political “recaudadores,” like Anaudi, are single-handedly able to raise hundreds of thousands of dollars. This fundraising ability gave Anaudi power over governmental appointments.\textsuperscript{500} Anaudi was not only implicated in hiring, he also was implicated in the firing of government employees based on political considerations, which is unconstitutional for all classifications of public employees:

Hernandez Perez also received and forwarded by email a list of individuals employed in trust positions within a government corporation that he wanted removed based on their political

\textsuperscript{497} Department of Health, Administration for General Services, P.R. House of Representatives, Aqueduct and Sewers Authority, Administration for Workforce Development, Public Corporation for the Supervision and Insurance of Cooperatives in P.R., Department of Corrections and Rehabilitation, Company of Public Parks, Department of Transportation and Public Works, Administration of Health Insurance, among others.


\textsuperscript{499} Cordero-Nieves et al., \textit{El Discrimen Político en el Empleo Público}.

\textsuperscript{500} According to the FBI investigation these companies neither had the experience nor expertise to provide required services, and therefore provided services that were deficient or substandard. As the U.S. Attorney for the District of Puerto Rico expressed, “cronyism and favoritism in the awarding of contracts in government has been emptying our coffers… Today, we all pay for the consequences… In exchange for appointments and gifts, we see how public servants forgot their ministerial duties, all in order to favor their friends… this practice is not only immoral, but illegal” (Press conference statements, “Federales Arrestan a Anaudi Hernández por Corrupción. El Recaudador Popular y Empresario era Blanco de una Pesquisa.” \textit{Nuevo Día}, December 3, 2015, https://www.elnuevodia.com/noticias/seguridad/nota/federalesarrestaanaudihernandezporcorrupcion-2134360/).
Because of the extent of his influence over personnel in the government of Puerto Rico, 
*El Nuevo Día*, the newspaper of record, referred to the scheme as “Anaudi’s Employment 
Agency.”

After a day in court, I asked out loud, “where was the supervision, who held them 
accountable?” The person next to me responded, “it’s obvious, Anaudi did… they responded to 
Anaudi.” In this case, the vulnerabilities of the personnel system were the foundation of the 
corrupt schemes.

By focusing on two cases, this section has given a short overview of the relationship 
between the patterns of normalized, informal job patronage within Puerto Rico’s formal and the 
type of illegal and corrupt activities that these patterns facilitate. These are just two examples, 
among many more. This is an initial analysis; further analysis of more public corruption cases is 
needed.

2. Implications for Practice

Understanding patronage as a cycle also has implications for reform. The case of Puerto Rico 
shows how patronage practices morph, adapt and continue within the confines of the institutions 
and processes that were put in place to contain them. Given these patterns, reforms that focus on

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changing laws (e.g. raising merit to constitutional status) are unlikely to work because laws may not address the underlying patterns and informal power structures of a patronage system—and will be unable to disrupt the mechanisms by which patronage reproduces. The same is likely to be true for other types of systemic corruption in other countries. Reforms ought to be crafted from a standpoint of deep understanding of the informal systems in place, which is what this research project intends to accomplish.

Additionally, job patronage is often central to other forms of systematic political corruption\(^{502}\) and is considered a pre-condition for other forms of systemic corruption. I find that analyzing corruption cases looking at the insider-outsider cycle yields insights about the role of patronage practices in personnel and their relationship to different types of corruption as well as of the relationship between the electoral cycle, personnel practices, and corruption, which could inform policies.

As an interviewee commented, after elections people “position themselves to “guisar” or benefit from the incoming administration, but the word “guisar” which literally translates to “making a stew,” (and presumably eating it), captures the voraciousness, the devouring of government resources that interviewees describe.

3. Limitations

Although my methodology allows for in-depth understanding of public employees’ experience in the Commonwealth of Puerto Rico, there are several criticisms that could be raised.

Generalizability: the results of this study are too specific and the sample too small for the results to be generalizable. The purpose of this study was not to find results that would be applicable to other contexts, the intent was to understand in-depth personnel and patronage practices in Puerto Rico.

Rico. Even though the results are not generalizable, there are some insights that are applicable to contexts that are dealing with similar difficulties in transitioning to professionalized, merit-based systems: implementation of any civil-service system should be designed with the knowledge of the informal practices in place, neglecting these practices could result in the superficial implementation or failed implementation of civil service laws.

Sample size: The sample size for the in-depth interviews is too small (n=23). Studying any type of corruption is difficult given that those with direct knowledge have very valid reasons for not divulging the information (e.g. fear of reprisals). It was very difficult to identify individuals with direct knowledge of how political parties work within government agencies (party operative) as well as human resource directors or officers. Even though the sample size was small, the 29 interviews were extensive, with some interviews lasting 3 hours. The 36 shorter informal interviews and the political discrimination court cases selected at random, provided additional evidence regarding the patterns described in this dissertation. Even though the details are different, the stories are remarkably similar. Furthermore, existing literature, government reports, newspaper articles, and public corruption cases confirm how generalized and normalized these practices are. In further research I would be interested in interviewing more individuals, including more political operatives or political party officials, HR employees, and public-sector union members and officials.

Bias in sample: given that the study employed a snowball sample and that interviewees knew about the topic of study— could I have ended up with a sample that had been disproportionally exposed to highly politicized environments? Additionally, the court cases under study focus on political discrimination, the experience of employees who are managed based on merit might be under-represented or absent.
I tried to balance this possibility by focusing the interview phase of the project in the least politicized and more professionalized instrumentalities within Puerto Rico’s bureaucracy: Executive agencies. The cases do provide evidence of the pervasiveness of these practices, as do government reports, news article, and prior academic studies on the topic of political discrimination.

Factors that I might be ignoring or studying too superficially:

Political groups / Political parties: An important limitation of this dissertation is that it incorporates the political structures only to a very limited extent. This was due to my focus on the experience of public employees but also to the difficulties in accessing informants willing to talk about the activities of the political parties. I pieced the discussion of the political structures mainly from the evidence in political discrimination cases and from the stories that interviewees shared with me—but this story should be expanded.

Unions: This study did not include the analysis of the involvement of public sector unions in personnel processes, mainly because it did not come up in interviews. Nonetheless, public corporations have very strong unions, and it is important to understand if and how public-sector unions are involved in the informal patronage system or, alternatively, serve as a shield from these practices.

4. Future Research

By focusing on the experience of public bureaucrats, my research strives to understand how an informal patronage system—a type of systemic public corruption—works within a formally merit-based civil service system. The evidence in political discrimination cases and public corruption cases are an extremely rich source of data which I will continue to draw from for further work in Puerto Rico. In the next paragraphs, I delineate two follow-up studies.
Puerto Rico: Changes in the Informal System?

Is the informal power balance changing?

There are indications that the power balance in the informal system has been changing and has become more disorganized. This might be at the root of the power that individuals such as Anaudi, whose sole or main motivator is the profit motif, have gained. These “recaudadores” exert great power over politicians, and, consequently, have also gained power over politician’s formal and informal power of appointment, allowing for the careful orchestration of corrupt schemes supporting individual “business men’s” fortunes. The “capriciousness” of patronage systems is partly (or in great part) due to their vulnerability to manipulations by external elements. The severity of the effects will vary depending on the outlook of who gains power over appointments, whether they have a short-term pillaging outlook or a long-term outlook, that while still self-serving, necessitates some long-term investments. A follow-up study would focus on these changes in the informal power balance and its effects.

Comparative Study: Aguascalientes, México

This study would add a comparative element to the Case of Puerto Rico. The purpose would be to study to a setting that is similar in terms of the frequent changes in political administrations at the state level, and that has a formal merit-based civil service system for public personnel management, but strong informal personnel management systems.

Aguascalientes established its merit-based civil service system in 2000, but, like in Puerto Rico, the frequent alternation between the two main parties—every 6 to 12 years for the past 26 years has been an obstacle to the successful implementation of civil service reform (Martínez-

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503 Grindle, Jobs for the Boys.
In addition to adding a comparative element to the initial study, the purpose of this study would be to see the applicability of the theoretical and methodological approaches employed in this dissertation in a different context. I want to see similarities and differences in the Aguascalientes and Puerto Rico examples: is the experience of public employees similar? Are informal practices similar? Are employees benefitted or punished based on their party’s in-power or out-of-power status? Is the personnel system constituted of cohorts of employees belonging to different parties? Is desire for vengeance also a mechanism that sustains informal personnel practices? Or is it something entirely different? If so, how does the informal system operate? How does it continue, and how is it experienced by public employees?

Initial conversations with public sector employees\(^505\) suggest that there are some similarities to the way political parties operate in Puerto Rico—employees, under certain administrations, have had to “pay to work” (make monthly contributions to the party); employees are forced to change party membership and militate in order to maintain their employment; and different from practices in Puerto Rico, there is a black-market in which government positions are sold.

My research confirms the importance of understanding the relationship of personnel management to different types of corruption, but also suggests the importance of looking beyond the formal civil service system and studying the specific informal systems in place, because the effects of how a civil service system is used or misused will vary depending on the characteristics and strength of the underlying informal systems. This study shows the importance of understanding how patronage functions based on the perspective of those within the system, in order to be able to identify the specific mechanisms involved in its continuation. In broader

\(^{505}\) This extension of my research project has IRB approval.
terms, a deep understanding of underlying informal systems in the corruption literature yields a much more nuanced understanding of what functions these systems serve, how these systems continue, and which effects they have.
REFERENCES


Oficina del Contralor de Puerto Rico. “Estudio sobre los Despidos, las Acciones Disciplinarias o Otras Transacciones de Personal por Motivos Político-Partidistas contra Funcionarios y Empleados de los Departamentos y de las Agencias de la Rama Ejecutiva. 1 de enero al 31 de diciembre de 2009,” 2011.


APPENDICES
Appendix I. Interview Script [*English version. Interviews conducted in Spanish]

Date: __________ Interviewee Number:____

I am starting a research project on the role of politics inside Puerto Rico’s government agencies, specifically about political discrimination and patronage. I could use your help in deciding the best way to approach these topics. I want to understand the perspective of those that are working or have worked in the Puerto Rican bureaucracy. Additionally, I want to understand your experience and your perspective, which will be incredibly valuable for my project. I know that these are very delicate topics and for this reason there will be no traceable record of your participation in this study. Your participation is completely voluntary. You can withdraw at any time or decide not to answer a particular question(s). If you give me your permission, this interview will be recorded in order to faithfully capture what we talk about today. This recording will not be made available to anyone else, and will be destroyed once it is transcribed. Any information that could potentially be linked with you, will be disguised, or eliminated (e.g. name of the agencies in which you have worked).

Permission to record: (verbal response)

Do you have any questions before we get started? Any concerns?

These are the questions I have thought about, I am going to go through them. Afterwards I want to know what you think of them.

1) When someone talks about political discrimination, what are they referring to? How would you define it? What can you tell me about political discrimination? (Possible follow up questions: Is it something you have experienced? You have witnessed? Have you ever been accused of politically discriminating against an employee?)
2) Tell me about politics inside the agencies you have worked in. What do you know about political groups working within agencies? What can you tell me about them? To your knowledge, do they influence agency processes? (e.g. personnel? Contracting? ) If so, how? Can you think of some examples?

3) How has your job been influenced by party politics? Affected by party politics?

4) Tell me about your experiences during changes in state administrations. (Possible follow-up questions: Have your job responsibilities changed after an administration change? How? Have the job responsibilities of employees changed after an administration change? How? Do you expect changes in your work responsibilities or conditions or work responsibilities or conditions of others to change after the elections?)

5) In your opinion, how are jobs distributed in the agencies that you have worked in or that you know of? [possible follow up questions: How does politics / political groups influence these processes? What about promotions, demotions and transfers?] How are contracts distributed? (ask about different types of contracts, decision-making processes).

After the interview, I will ask them what they thought about the question; how they think I should approach this topic with interviewees that might not know me; How questions should be modified; Which questions I should add/remove.
Guión Entrevista Piloto

Fecha: ________

Número Entrevistado:____

Estoy comenzando una investigación sobre el rol de la política partidista en las agencias del gobierno de Puerto Rico. Específicamente, me interesan los temas del descrímen político y del patronazgo. Su perspectiva sería de gran ayuda para decidir la mejor manera de abordar estos temas. Deseo entender la perspectiva de los que están trabajando o han trabajado en la burocracia puertorriqueña. Además, quiero entender su experiencia y su perspectiva, que será invaluable para mi proyecto. Sé que estos son temas muy delicados y por esta razón no habrá nada que lo pueda ligar a esta investigación. Su participación es totalmente voluntaria. Puede retirarse de la investigación en cualquier momento o decidir no contestar preguntas específicas. Si me da permiso, esta entrevista será grabada para captar con la mayor fidelidad lo que conversemos. Esta grabación no estará disponible para nadie más. Se mantendrá en un archivo electrónico protegido por contraseña hasta que sea transcrita. Una vez transcrita, la grabación será destruida. Yo haré la transcripción de las entrevistas. Si no quiere que su entrevista sea grabada, tomaré notas a mano de sus respuestas para luego transcribirlas a un documento Word. No habrá información en las anotaciones tomadas a mano, ni en las anotaciones transcritas, que puedan ser ligadas a usted. Su expediente será identificado por un número que se le asigne o por un nombre ficticio que usted elija. Cualquier información que pudiese ser ligada a usted, será disfrazada o eliminada (ej. Nombres de las agencias en las cual ha trabajado). Favor evite la mención de nombres o información que pueda identificar a terceros. Si lo hace inadvertidamente, detendré la grabación de inmediato para borrar esa sección de la entrevista. Si la entrevista no está siendo grabada, no escribiré esa información.
¿Me da permiso para grabar la entrevista?: (respuesta verbal)

¿Tiene alguna pregunta antes de que comencemos? ¿Alguna preocupación?

Estas son las preguntas que he pensado hasta el momento. Voy a hacerle todas las preguntas y después de la entrevista quiero que me diga lo que piensa sobre las mismas.

1) Cuando alguien habla sobre discriminación política, ¿a qué se refieren? ¿Cómo usted lo definiría? ¿Qué me puede contar sobre el discriminación político? (Posibles preguntas de seguimiento: ¿es algo que ha experimentado, que ha presenciado? ¿Alguna vez se le ha acusado de discriminar políticamente contra un empleado?)

2) Cuénteme sobre la política partidista en las agencias en las cuales ha trabajado. ¿Qué sabe sobre los grupos políticos que están activos dentro de las agencias en las que ha trabajado? ¿Qué me puede contar sobre estos grupos? ¿Entiende que los mismos ejercen influencia sobre los procesos de la agencia (ej. ¿Recursos humanos? ¿Contrataciones?). Si entiende que es así, ¿cómo la ejercen? ¿Me pueda dar algunos ejemplos?

3) ¿Cómo ha influido la política partidista en su trabajo? ¿Cómo se ha visto afectado por la política partidista?

4) Cuénteme sobre sus experiencias durante cambios de administración. (Posibles preguntas de seguimiento: Luego de un cambio de administración, ¿han habido cambios en sus responsabilidades o condiciones de trabajo? ¿Cuáles? ¿Han habido cambios en las responsabilidades o condiciones de trabajo de otros empleados? ¿Cuáles? ¿Usted espera cambios en sus responsabilidades o condiciones de trabajo o en las responsabilidades o condiciones de trabajo de otros empleados, después de las elecciones / a raíz de un cambio de administración?)
5) En su opinión, ¿cómo se distribuyen los trabajos en las agencias en las cual usted ha trabajado o conoce? (Posibles preguntas de seguimiento: ¿Qué influencia tiene la política partidista / los grupos políticos en estos procesos? ¿Y en los ascensos, descensos y traslados? ¿Cómo se distribuyen los contratos? (preguntar sobre diferentes tipos de contratos, sobre el proceso de toma de decisiones).

Luego de la entrevista, les preguntaré qué opinan sobre las preguntas; cómo piensan que debo abordar este tema con personas que no me conocen; cómo debo modificar las preguntas; y qué preguntas debo añadir o quitar.
Appendix II. Interviewee Characteristics: By Political Affiliation, By Years in Government, By Employment Type

<table>
<thead>
<tr>
<th></th>
<th>Pro-Commonwealth</th>
<th>Pro-Statehood</th>
<th>Unknown</th>
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</thead>
<tbody>
<tr>
<td>11</td>
<td>9</td>
<td>3</td>
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<table>
<thead>
<tr>
<th></th>
<th>Less than 15 years</th>
<th>15-30 years</th>
<th>&gt; 30 years</th>
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<tr>
<td>2</td>
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<td>6</td>
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<table>
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<tr>
<th></th>
<th>Career Employees</th>
<th>Trust Employees</th>
<th>Government Contractors</th>
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</thead>
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<tr>
<td>22</td>
<td>12</td>
<td>6</td>
<td>6</td>
</tr>
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</table>
Appendix III. Court Case Selection Process

* CASES: *Cases are the written opinions of appellate and lower court judges.*

Using the Thomson Reuters Westlaw database I searched for the terms “political discrimination puerto rico” in the “Puerto Rico” jurisdiction and “Related Federal,” which includes US Supreme Court, applicable Court of Appeals, District Courts and Bankruptcy Courts. [*Of the local court cases, it seems to include only the ones that made it to the Puerto Rico Supreme Court.] Date of search: January 18, 2016.

The initial search resulted in 1026 cases, or the written opinions of appellate and lower court judges.

I went through each of the summaries and classified them in the following way:

Of the 1026 documents, 837 include political discrimination claims among the plaintiffs’ allegations. Of these,

- 820 involved claims of political discrimination in the public sector in Puerto Rico. Of these,
- 760 involved claims of political discrimination or political harassment in personnel management in Puerto Rico’s public sector, which are the focus of this study.
- 32 involved claims of political discrimination in government services, such as licenses, permits, expropriations, housing subsidies, enforcement of fire code
- 13 involved allegations of political discrimination in contracting in the public sector;
- 8 involved political discrimination in government grant awards (to Municipalities and NGOs);
- 3 involved political discrimination allegations among elected officials
- 1 involved political discrimination claims in response to civil disobedience acts
- 1 involved dossiers of “subversives” in the Intelligence Division of the Police of Puerto Rico
- 1 involved police targeting of political minorities
o 1 involved allegations of political discrimination against Governor for investigations into public corruption***

- 6 involved political discrimination claims outside the Puerto Rico jurisdiction
- 8 involved political discrimination claims in the private sector;
- 3 involved claims of political discrimination in personnel management in Federal Agencies located in Puerto Rico

Of the remaining 189 documents:

99 involved allegations of other types of discrimination (national origin, gender age, military status)

- 48 involved other types of discrimination in the public sector
- 48 involved other types of discrimination in the private sector
- 2 involved other types of discrimination out of the PR jurisdiction
- 1 involved other types of discrimination in a federal agency

57 do not involve allegations of discrimination

- 2 involved alleged retaliation for whistle blowing in the public sector

33 were about electoral matters

- political rights of Puerto Ricans
- constitutionality of PR electoral code
- related to political status of PR
- uneven application of electoral processes
- party / candidate inscriptions
- challenge of elections
Step 2 in Case Selection Process

- I identified 760 "cases" of the type of political discrimination I am interested in studying:
  political discrimination in personnel management in Puerto Rico public sector [\* The 1st Circuit Appellate Court defined a political discrimination claim as actionable when
the following elements are established: (a) the defendant and plaintiff belong to
different political parties; (b) the plaintiff’s political affiliation is known by the
defendant; (c) there was an adverse employment action; (d) and political affiliation was
a substantial or motivating factor for such action (Ocasio-Hernández v. Fortuño-Burset
640 F.3d 1 (1st Cir. 2011), 2011). ]

- I went one by one in Westlaw, checking the "history" tab to see which cases are "directly
related" or "related" in order to identify how many single cases there are.

- I also checked by case name, given that not all related “cases” appear in case history, but
the cases might have the same docket number, or same plaintiffs/defendants, or one is
in the federal court and another one in the PR Supreme Court- I classify these as
"related?" (with a question mark). I classify as "single" the cases that I cannot find any
matching “case” within the case results (the 760). In some instances, “cases” that did
not appear in the original search, appeared as part of the history of the cases in my
search—I did not include these additional “cases” in the case list.

1. 338 of 760 “cases” were single (the only document pertaining to a particular case)
2. The remaining 422 documents belonged to 161 single cases (directly related or related)
3. There was a total of 499 cases to randomly choose from.
4. Generated random sample
5. Random sample of 10% of cases
**Appendix IV. Court Cases**

Randomly Selected Cases

<table>
<thead>
<tr>
<th>Case Details</th>
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<tbody>
<tr>
<td>Caro v. Aponte-Roque, 878 F.2d 1 (1st Cir. 1989)</td>
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<tr>
<td>Hiraldo-Cancel v. Aponte, 925 F.2d 10 (1st Cir. 1991)</td>
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<tr>
<td>Acevedo-Orama v. Rodriguez-Rivera, 389 F.Supp.2d 238; CIV. 04-1835, 2005</td>
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<tr>
<td>Acevedo-Garcia v. Vera-Monroig, 204 F.3d 1 (1st Cir. 2000)</td>
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<tr>
<td>Collazo Rivera v. Torres Gaztambide, 812 F.2d 258 (1st Cir. 1987)</td>
</tr>
<tr>
<td>Colon Ortiz v. Rosario, 132 F. App'x 847 (1st Cir. 2005)</td>
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<tr>
<td>Cornavaca v. Rios-Mena, 18 F. Supp. 3d 105 (D.P.R. 2014)</td>
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<tr>
<td>Galloza v. Foy, 389 F.3d 26 (1st Cir. 2004)</td>
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<tr>
<td>Gonzalez Santos v. Torres Maldonado, 814 F. Supp. 2d 73 (D.P.R. 2011)</td>
</tr>
<tr>
<td>Mercado-Berrios v. Cancel-Alegria, 611 F.3d 18 (1st Cir. 2010)</td>
</tr>
<tr>
<td>Nieves-Luciano v. Hernandez-Torres, 397 F.3d 1 (1st Cir. 2005)</td>
</tr>
<tr>
<td>Nieves-Villanueva v. Soto-Rivera, 133 F.3d 92 (1st Cir. 1997)</td>
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<tr>
<td>Rosario Nevarez v. Torres Gaztambide, 820 F.2d 525 (1st Cir. 1987)</td>
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### Case Characteristics

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<th>Municipality</th>
<th>Corporation</th>
<th>Other (Legislative Branch; trusts)</th>
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<tr>
<td>Cases</td>
<td>26 (52%)</td>
<td>9 (18%)</td>
<td>11 (22%)</td>
<td>4 (8%)</td>
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<th>Cases by Defendant Affiliation</th>
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<th>PPD (Pro-Commonwealth)</th>
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<td>30 (60%)</td>
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<tr>
<th>Cases by Plaintiff(s) Affiliation</th>
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<th>PPD (Pro-Commonwealth)</th>
<th>PIP (Pro-Independence) or unknown</th>
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<tr>
<td></td>
<td>30 (60%)</td>
<td>18 (36%)</td>
<td>2 (4%)</td>
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<tr>
<td>HR Director or Personnel among Defendants</td>
<td>Number and Percentage of Cases</td>
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<td>Yes</td>
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<tr>
<td>No or Unknown</td>
<td>36 (72%)</td>
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**Docket Research**

- O'Connell v. Marrero-Recio, et al., 724 F.3d (1st Cir. 2013)
- Reyes-Perez v. State Ins. Fund Corp., 755 F.3d 49 (First Cir. 2014)
Appendix V. Permission for Use of Copyrighted Material (Electoral Maps) Used in Figure III. Patronage as a Cycle, Electoral Maps, 2004, 2008, 2012.

25/11/2018 Gmail - Autorizacion para utilizar mapa

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Autorizacion para utilizar mapa

Manuel Alvarez Rivera <malvarez@eleccionespuertorico.org>  
To: Elizabeth Perez Chiques <lisiperezchiques@gmail.com>  

Saludos,

On Wed, 26 Sep 2018 22:31:20 -0400, you wrote:

> Saludos, escribo para solicitar autorizacion para utilizar algunos de los
> mapas sobre los resultados de las elecciones generales de Puerto Rico en
> mi
> >
> > Gracias,
> >
> > Elizabeth Perez
> > Departamento de Administracion y Politica Publica
> > Universidad de Albany, SUNY
> >
> Primero que nada, le ruego me disculpe la demora en contestar
> su mensaje. En segundo lugar, le escribo para hacer constar
> mi autorizacion para la utilizacion de los mapas electorales
> que he publicado en mi web de <eleccionespuertorico.org> en
> su trabajo de tesis, con la condicion de que en la referida
> tesis se cite la fuente de procedencia de estos.
>
---

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ElectionsPuertoRico.org  
Recursos Electorales en la Internet  
RecursosElectorales.org  
malvarez@manuelalvarez.net  
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