Legal Culture in the Age of Globalization

Latin America and Latin Europe

Edited by Lawrence M. Friedman and Rogelio Pérez-Perdomo
For decades, legal scholars have debated the nature of the legal system in Puerto Rico while attempting to understand the conflicting ways in which the civil law and common law traditions collided in a new colonial setting. The norms of the civil law system developed during the four centuries of Spanish colonialism came into apparent conflict, or at least tension, with the rules of the Anglo-Saxon common law after the U.S. invasion of Puerto Rico in 1898. Although the two systems have conflicted with each other in political rhetoric, in practice both systems have coexisted, although not always in normative harmony. Many of the tensions between these two legal traditions have not resulted directly from legal doctrines or theories. Rather, they are the result of the connection between legal matters and the socioeconomic processes that accompanied Puerto Rico’s incorporation into the industrial and urban world. However, the colonial context in which these changes occurred complicate the understanding of what in itself is a complex process.

How can we explain that at the inception of the twenty-first century, Puerto Rico has a “modern” legal system in place that responds to the socioeconomic and political challenges of the time and is trusted by a great majority of the population? The main thesis of this chapter is that in practice, the legal system has evolved to face the modernization processes and social changes Puerto Rico experienced in the twentieth century and has gradually gained the confidence of its clients. Actually the legal system has responded to the challenges by the citizens to make it work for their needs rather than according to the theoretical explanations provided by legal scholars.

Although in many Latin American countries, the legal system transformation accelerated in the final quarter of the twentieth century, the fundamental changes in Puerto Rico took place in two previous periods: the first in the early decades of the twentieth century when the United States enforced its judicial practices, and the second in relation to the constitutional reform of 1952. After the 1970s, the changes have been mostly in the organization rather than in the structural and conceptual framework of the system. In addition, the colonial context in which these changes have taken place situates Puerto Rico in a peculiar position in relation to the rest of Latin America.

Precisely because of the colonial context, the law and legal system has been contested areas, for which scholars have claimed Puerto Rican national identity. The phrase “the defense of the Puerto Rican law” is used frequently in Puerto Rico’s legal literature (see Trias Monge 1978, 1991; Delgado Cintón 1978, 1982, 1988). For example, in his book on the Puerto Rican judicial system, José Trias Monge (1978), one of the most prolific scholars on the history of Puerto Rican law, summarizes his “defense” of Puerto Rican law by pointing out the still unresolved problem of “the creation for this country [Puerto Rico] of its own law, of a law that responds primarily to the needs and aspirations of our people, as conceived by them, of a law formed by Puerto Ricans or with their active and considered participation that is solely for Puerto Ricans” (255–56). Similarly Carmelo Delgado Cintón (1978) had argued that “the institution of the judicial power, as part of the state, serves the American domination” and that even the legal system reform of the early 1950s is “not Puerto Rican law because its creator and promoter was an American judge” (148). A more recent study by Efren Rivera Ramos (2001) looks carefully into the relationship of colonial law and Puerto Rican law to analyze the “inequality and disempowerment that colonialism entails” (248). Rivera Ramos concludes that “it is irrelevant whether those norms are deemed to be good or bad, detrimental or beneficial in some particular sense. The question is that they have been determined by others” (231).

In general, these viewpoints encompass profound sentiments of cultural and national identity to confront the Amerization or transcultural in legal matters resulting from a century of American colonial experience in Puerto Rico. But in spite of this theoretical questioning, after decades of legal practices, it is difficult to justify as foreign the product of the work of thousands of Puerto Rican men and women that in one way or another has labored to reconstruct and reconcile the legal system. Nor can the decisive of thousands to use the system be disregarded. Therefore, while scholars are proposing the theory of a “defense” for the Puerto Rican law, commie Puerto Ricans were beginning to use and trust the courts for resolving matters of all kinds, many of which earlier would have been resolved in alterna.
CHAPTER 10
Citizens Running to the Courts:
The Legal System in Puerto Rico
and the Modernization Process

BLANCA G. SILVESTRINI

For decades, legal scholars have debated the nature of the legal system in Puerto Rico while attempting to understand the conflicting ways in which the civil law and common law traditions collided in a new colonial setting. The norms of the civil law system developed during the four centuries of Spanish colonialism came into apparent conflict, or at least tension, with the rules of the Anglo-Saxon common law after the U.S. invasion of Puerto Rico in 1898. Although the two systems have conflicted with each other in political rhetoric, in practice both systems have coexisted, although not always in normative harmony. Many of the tensions between these two legal traditions have not resulted directly from legal doctrines or theories. Rather, they are the result of the interaction between legal matters and the socioeconomic processes that accompanied Puerto Rico’s incorporation into the industrial and urban world. However, the colonial context in which these changes occurred complicated the understanding of what in itself is a complex process. How can we explain that at the inception of the twenty-first century, Puerto Rico has a “modern” legal system in place that responds to the socioeconomic and political challenges of the time and is trusted by a great majority of the population? The main thesis of this chapter is that in practice, the legal system has evolved to face the modernization processes and social changes Puerto Rico experienced in the twentieth century and has gradually gained the confidence of its clients. Actually the legal system has responded to the challenges by the citizens to make it work for their needs rather than according to the theoretical explanations provided by legal scholars.

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In general, these viewpoints encompass profound sentiments of cultural and national identity to confront the Americanization or transculturation in legal matters resulting from a century of American colonial experience in Puerto Rico. But in spite of this theoretical questioning, after decades of legal practices, it is difficult to justify as foreign the product of the work of thousands of Puerto Rican men and women that in one way or another have labored to reconstruct and reconcile the legal system. Nor can the decision of thousands to use the system be disregarded. Therefore, while scholars were proposing the theory of a “defense” for the Puerto Rican law, common Puerto Ricans were beginning to use and trust the courts for resolving matters of all kinds, many of which earlier would have been resolved in alterna-
tive manners outside the courts. In the new courtrooms where thousands of Puerto Ricans work as functionaries of the courts, efforts are made to ease—not always successfully—commercial transactions, to interpret labor laws, and to address complaints of social and gender inequality, among others. The citizenry began to use the courts more and more frequently and effectively as the common method to resolve problems and controversies in a pragmatic form without considering criticisms about the legitimacy of the legal system. Some could argue that this is precisely a result of the colonial relationship with the United States. However, neither should the practice be discarded as irrelevant, nor should a dichotomy between practice and theory be proposed. Both legal practices and theoretical perspectives have coexisted and negotiated creative solutions in the contested world of modern Puerto Rico.

This chapter develops two central ideas. First, it presents how the models of modernization that developed in Puerto Rico throughout the century, but above all around the commonwealth constitution of 1952, involved a practical redefinition of the legal system. Second, it links this new legal system to the rise of a notion of participatory citizenship, which created a greater dependency on the courts for conflict resolution. The chapter is divided into two parts. The first part links the processes of formal modernization to the legal system. The second examines changes in the legal system functioning after the 1970s and the significant increase in the use of the courts to solve conflicts of social and economic character. In the end, arguments of differentiation of Puerto Rican law vis-à-vis other systems, have not in practice precluded the continued use of the legal system by Puerto Ricans.

Modernization and the New Legal System

For over three decades, the Office of the Administration of the Courts has reported that the caseload, as well as the complexity, of the courts in Puerto Rico has increased. Requests to the legislature for a larger budget have been accompanied by claims of need for more specialized staff and better physical facilities in order to address the demands on the system. The legal system has struggled to reorganize its services in a more efficient way by establishing new levels of courts, changing the courts’ competency, and adding a layer of professional services to alleviate the courts’ duties (see, for example, Administración de los Tribunales 1973–74, 1988–89, 1992–93). One of the problems that the legal system faced was how to support its claim in a persuasive way. At first glance, the basic statistics compiled by the Administration of the Judicial System in Puerto Rico do not yield a significant increase in the rate of active cases in the courts per capita during the period 1974 to 1994. However, this does not mean that the courts are working less or that the citizens are not using the system. The superior court level can be used as an example of the difficulties faced with data gathering in a period of rapid change.

Table 10.1 shows an increase in the superior court caseload during a period of twenty years. After 1975, there is a decline in the civil cases resolved and pending. However, a reorganization of the jurisdictional competence of the court that increased the value of the damages claimed in superior court would account for much of the variance. The same is true for criminal cases, because the law removed most of the investigative and preliminary proceedings from the superior court level. In a similar way, the creation of numerous administrative agencies with adjudicative powers diverted initial court proceedings to other forums until they finally reached the superior court at a later time. Does it mean then that the figures do not support the idea of an increased trust of the citizens in the courts while the ongoing process of modernization of the legal system took place to face the changing socioeconomic conditions of Puerto Rico? Some of the explanations for the discrepancy in these figures can be accounted for in the experience of the legal system prior to the 1970s. Some are rooted in the reorganization of the system throughout the last quarter of the twentieth century to respond to the challenges and alleviate the increase in the number of cases and their complexity.

The annual report (Informe anual) of the Administración de los Tribunales for 1973–74 shows a significant increase in cases compared to the caseload in the previous decade. Although it is difficult to compare the exact courts’ caseloads, of the three measures reported—new cases presented, cases resolved, and cases pending—the first seems to give the best idea of citizens’ use of the courts. The other two categories are related more to the courts’ efficiency in handling the cases than with clients’ use of the system. Table 10.2 presents information on the new cases in the superior courts from 1965 to
For over three decades, the Office of the Administration of the Courts has reported that the caseload, as well as the complexity of the caseload in Puerto Rico, has increased. Similarly, a greater number of court administrative services have been requested for more specialized staff and better facilities to handle the demands on the system. The legal system has not been prepared to address these demands as efficiently as the courts can handle them.

The annual report (Informe Anual) of the Administracion de los Tribunales (1973-74) shows the caseloads in the five courts, the total number of cases filed, and the number of cases pending in each court. The report indicates that the caseloads for the previous year were higher than in 1973, which is attributable to the increased number of cases filed in the courts. The report also shows that the caseloads in the courts have increased, which is consistent with the increased caseload in the previous year.

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1998. In the ten years between 1965 and 1975, there was a 98.6 percent increase in new civil cases. In the fiscal years between 1996–97 and 1997–98, there was an increase of 12 percent. Although the figures are not necessarily comparable because the courts changed their organization and jurisdictional competence through those decades, they provide a setting to begin asking questions about the Puerto Rican legal system. Each important change was faced with significant increases in the operating budget (which rose from just over $82 million in 1988–89 to more than $155 million ten years later) and with attempts to reorganize the court system, which were not always successful but which increased the complexity of the structure of the administration of justice and its budget. As such, this trend is not exceptional, as it was experienced in other countries.

In Puerto Rico, nevertheless, there is a special consideration that we must take into account. The increase in the use of the courts to resolve civil matters occurred in the midst of critiques by some sectors about the Puerto Rican “accommodation” to or even “assimilation” with (to borrow anthropological concepts) the U.S. legal system (Trías Monge 1978). Contrary to the criticisms, the system became even more complex and continuously adopted the American model without great dislocations in its practical functions. However, the credibility of the courts seemed not to be affected, as large numbers of citizens kept looking to the court for solutions to the controversies that affected them.

Although this new legal system had been part of the policy of the United States to incorporate Puerto Rico into the U.S. socioeconomic world since the beginning of the twentieth century, the system became a field both for affirming and questioning the new processes. After 1898, the U.S. government used the legal system to establish its power, legitimize it, and consolidate efficiently its permanence in Puerto Rico (Nazario Velasco 1999); however, the new system permitted and fomented the process of sociocultural change sought by diverse sections of the population (Rivera Ramos 2001, 21, 236). New norms and legal procedures were incorporated that in the long run increased the number of Puerto Ricans participating in some way or another in the legal system. New sectors of society, some from the elite and others from intermediate groups, became attorneys, judges, and personnel of the courts or were called for juries in criminal procedures. Furthermore, this same legal system that some jurists criticized as colonial and foreign created arenas for subordinated people to challenge the power of the urban interests. In the long run, the legal system was converted into an open forum for the creation and re-creation of new rights and judicial institutions in accordance with the times.

There is no doubt that the modernization of the judicial system was one of the forms of control that the U.S. government implanted after the occupation, nor is there doubt that new doctrines, laws, and judicial theories were incorporated along with the new political system. But what can be questioned is the effect these changes had on the way in which the people understood and used the new system that was established.

The Spanish legal system existing in 1898 in Puerto Rico had three levels. In the lowest level were the municipal courts, presided over by judges who were not attorneys, who charged fees from the litigants, and who were often criticized for their legal decisions (Nazario Velasco 1999). Then there were the courts of first instance or instruction with primary jurisdiction in civil cases and criminal investigations that were later carried to the higher level tribunals for trial. At the appellate level, the San Juan Territorial Audience saw both criminal and civil cases that then could rise to the Supreme Court seated in Madrid. The substantive Spanish law had passed through an intensive process of reform precisely in the two decades before the Spanish American War (Delgado Cintó 1982; Nazario Velasco 1999). Therefore, many sectors of both Puerto Rican and American society thought that, at the time, the law was adequate for the new demands of a changing society. Nonetheless, both criticized the functioning of Spanish courts in Puerto Rico, the perceived partiality of the judges, and the lack of procedures to guarantee even the most elemental rights (Carroll 1899, 296–315). The long years of demanding reforms from Spain were not forgotten by significant Puerto Rican sectors that thought the United States was bringing the hope for modernization of the legal system. The military government set up a judicial reform process to establish trial by jury, appellate procedures, habeas corpus, and injunctions and to restructure the administration of justice following the U.S. model (Nazario Velasco 1996). But the law also justified the U.S. presence and power in Puerto Rico, and it gave legitimacy to numerous instances of metropolitan repression (Rivera Ramos 2001, 236).

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opposition to the American government ensued. However, basic institutions for the "rule of law" developed, though flawed due to their colonial origin, and rapidly became part of the Puerto Rican legal values. They later served as the basis for the second stage of reforms that began around the 1952 constitution of the Commonwealth of Puerto Rico.

Together with the formal legal system reform, the creation of a law school at the University of Puerto Rico in 1913 became another important step in the implantation of the new model. If the legal system was to respond to the new concepts and organizational structures, it had to train the lawyers. The Law Department, as it was initially called, was organized along the lines of American schools of law and was accredited by the Department of Education in New York in 1916. The program prescribed four years of specialized work, which meant previous university studies for admission, a significant divergence from other Latin American countries where the study of law started at the entry college level. The law curriculum was a significant element in establishing the principles of the new legal system. Organized in the American way, the courses taught civil treaties at the same time that they emphasized case law. The American way of legal study was incorporated hand in hand with the civil law system, which little by little affected how cases were decided and how legal theory was defined. But even more important, the law as a field of study became science: "[It] forced the rigorous analytical modes that the modern rationality required and helped to legitimize, as a science, the social organizational forms of capitalist nature and liberal thinking embodied in the codes" (Nazario Velasco 1996, 339; Delgado Cintón 1980). Trias Monge (1978, 245) has explained how ideas from both legal systems were mixed through the process of training lawyers, in his opinion, in an erroneous way.

In practice, the process, even for attorneys, was complex. Although the Americanization of the law has been represented as a struggle between Puerto Rican and American groups, recent studies have shown that in the first years of government by the United States, the Puerto Rican legal profession also attempted to redefine the process to support their own agenda (see Nazario Velasco 1996, 401–8). One of these projects, possibly the most important for the survival and legitimization of the profession, was the legalization of conflict-resolution procedures—that is, the growing dependence on courts to resolve matters between citizens or between the state and its citizens. Access to the courts facilitated the acceptance of court proceedings by common citizens as the norm to solve a large part of their everyday circumstances.

It was not until the 1930s that, as a consequence of the recognition by the U.S. Congress that Puerto Rico could organize its own government, the restructuring of the legal system in Puerto Rico began to lead to its present form. The 1930 Organic Law of the Judiciary established a sole judicial district in Puerto Rico—that is, a unified jurisdiction over the entire territory. This partially and temporarily solved some practical problems, such as the unequal work distribution in courts throughout the island, the inefficient use of public funds, and the congestion in the courts' calendars. Nevertheless, problems still existed, such as the unequal workload among municipal courts and the functioning of the justices of the peace, whose salaries depended on the population distribution and the complexity of the social and economic structures of each town. Although some courts were overburdened, the workload was much lighter in others.

The commonwealth constitution of 1952 completely reorganized the judicial branch. It created a Supreme Court with the responsibility for establishing an integrated judicial system. Prominent Puerto Rican attorneys, most of whom were educated at the University of Puerto Rico Law School, participated in drafting the constitution and other related laws. Abounding in their submitted proposals were references to the need for "responsible administration" and the "efficient operations" the new system would use in its new scientific approach to a new legal culture. One of the revolutionary principles of the reform was judicial independence. This principle also included the power that the Supreme Court had to organize lower courts. The other important constitutional principle was the integration of jurisdiction, function, and administration of the courts in Puerto Rico. An integrated system would be more efficient, would permit the equal distribution of the casework, and would give greater administrative flexibility (Informe de la Comisión de la Rama Judicial 1961, 2609). This broke with previous ideas about special courts by emphasizing judicial specialization rather than court specialization as a mode for reducing the constant need to increase the number of judges. As part of the guarantee for judicial independence, the Judicial Branch Commission recommended that the Legislative Assembly adopt various ways to prohibit political participation by judges.

In the Law of the Judiciary of 1952, the act that organized the new legal system under the commonwealth constitution, there were, among other novel elements, two that supported the above-mentioned scientific conception of the law. The first is the organization of judicial conferences. This program improved the administration of justice through critical evaluations of the courts (Report on the Judicial Administration Law of Puerto Rico [1978], 141, 277). Judicial conferences also encouraged the professional development of judges and attorneys, as well as the technical personnel of the courts. Furthermore, they contributed to the expansion of the role of the courts with regard to social and economic aspects.
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of society, because often the themes of the conferences bridged the gap between the judiciary and the rest of society by studying matters and problems of broad interest but with legal consequences.

The second new element was the establishment of a legal services program for people of low economic means. Until then, pro bono attorneys were appointed by the court but did not have the resources to do their job adequately. The Puerto Rican low-income population could not turn to the courts, even to claim their fundamental rights, because they could not pay the cost of litigation. Under the Law of the Judiciary, the General Justice Court and the Office of the Administration of the Courts coordinated with the Bar Association and the University of Puerto Rico Law School to “stimulate the development of energetic and efficient methods for proportioning legal services to those who need them” (Tías Monge 1978, 141). These programs have had limited scope because of a lack of funding, but nonetheless have been important in the process of society’s “legalization” by allowing people who previously did not have access to the courts to litigate their claims.

Both matters coincide with the reorganization of the curriculum in the Law School at the University of Puerto Rico and its expansion to include a legal services clinic. Therefore, the new government’s objectives were in harmony with those of the university with regard to the legal system and the institutional help that the latter could offer as the only institution of higher education in the state. Furthermore, during the first fifteen years after the approval of the 1952 Law of the Judiciary, there were important studies carried out under the supervision of the Puerto Rican Supreme Court in collaboration with the University of Puerto Rico on problems such as the juvenile courts, the merit system in the courts, and judicial efficiency.

With the profound reforms established in Puerto Rico by the constitution of 1952, the legal system expanded itself in ways similar to those described by legal scholars elsewhere (see Toharia in this volume). The legal system used this growth to gain credibility for the principle of judicial independence as well as for the rhetoric of efficiency and impartiality surrounding the new judicial branch. The system began to penetrate aspects of social life that were previously relegated to the private sphere and at the same time responded to the new challenges arising with the industrialization and urbanization processes.

In the period between 1952 and 1965, Puerto Rico experienced a series of profound socioeconomic changes. The economy transformed from predominantly agricultural to industrial. Hundreds of factories were established in the areas surrounding the cities, stimulating urban growth. Women entered the industrial and service markets in large numbers and in certain sec-

tors displaced male labor (Silvestrini 1980). Many of these new forms of social structure had direct legal repercussions in statutes, administrative laws, and labor and business issues. The larger number of torts, family relations, and probate claims were also related to the new urban and industrial surrounding. The legal system had to be modified to attend to the pressures produced by these changes and to ease the process in accord with the times.

The 1952 restructuring of the legal system had two direct consequences. First, it significantly increased the number of judges and attorneys. Second, it created a series of allied and supporting programs that increased the professional personnel and staff of the courts. The number of superior court judges grew from thirty in 1952 to eighty-nine in 1976 (Administración de los Tribunales 1974–75, table B–1). The number of law school students increased rapidly as two private law schools were organized following the curriculum model of the University of Puerto Rico. By the end of the 1990s, Puerto Rico had three accredited law schools and more than fifteen thousand attorneys (Colegio de Abogados de Puerto Rico 1998).

The increase in the number of judges was accompanied by an expansion in the number and function of the professional and technical court personnel. Professional and technical employees were recruited for family relations units and juvenile court services. Some were attorneys, and others acted as investigative and professional support roles. The courts began to use health professionals more frequently, especially psychologists and therapists, who offered expert opinions increasingly gained influence in judicial decisions. In criminal cases, parole officers, counselors, and alternative justice programs acquired a central role. In practice, though, the new judicial framework created some contradictory results. At the same time that the administration of justice became more professional in its services and citizens’ needs were more often taken into consideration, the court proceedings became more complex, the wait for resolution of the cases longer, and the dissatisfaction more widespread among the citizens who dealt with a system that did not always promptly resolve their disputes.

Although it is difficult to measure with precision the effects of the reorganization of the legal system in terms of the relationship of courts and the clients, or the improvement in the resolution of cases, there are some indicators showing that the courts became more efficient even though the new structure still had some areas that needed attention. Table 10.3 shows that the number of cases pending at the end of the fiscal year (see column 10) and the total active cases (column 6) increased each year between 1965 and 1977. Some of the rise can be accounted for by the near duplication of the new cases with original jurisdiction in the superior court (see column 3), which indicates a higher rate of clients. However, in terms of the case resolution,
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the increase in new cases was over 100 percent, with the noncontentious cases increasing 3.7 times between 1965 and 1975. In general, the courts were able to deal with more cases but still had a large caseload unattended.

Figure 10.1 (case distribution by topic) shows that 33 percent of the civil cases handled in the superior court pertained to family law. This fact is interesting because the family was an area traditionally understood to be in the private arena in which the legal system had a relatively small part. Nonetheless, with the incorporation of a larger number of women in professional and industrial sectors of the economy and the corresponding feminist mobilization in the 1970s, many groups began to demand a legislative recognition of gender equality. In spite of the fact that the commonwealth constitution prohibited sexual discrimination, there remained in the 1970s innumerable legal statutes discriminating against and subordinating women, many related to family law. The civil code of 1902, revised in 1930, echoed social practices that kept women, particularly married women, in a state of subordination to their husbands. Thanks to the work of diverse feminist groups, many new theories in labor and family law rose to prominence. In 1976, changes in family law, such as the coadministration of the sociedad legal de ganancias (community property) and the shared roles in child custody, were approved. These legislative changes, together with the restructuring of the legal administration, opened the doors for a greater number of women to claim rights for themselves and for their children in the courts. In spite of the ap-

parent legal equality of women and their easier access to the courts, systemic reforms did not always benefit women equally. In reality, the system resulted in an excessive dependence by women, especially those with lower income levels, on judicial proceedings, even when they were conflicting and not efficient in practice. Delays continued to be the norm in the courts and preconceived ideas about gender roles and the lack of direct and effective ways to make decisions over family relations still persist. In the long term, even though the legal system has improved, there are still tensions and incongruities caused by excessive complexity both in formal proceedings and court-related professional services.

Changes in the practice of family law and the way in which the Puerto Rican legal system faces increasing demand in this area returns us to the themes discussed at the beginning of this chapter. Is there a contradiction in the tension in a legal system when the courts oversee child support by establishing a program to regulate parent's compliance with these obligations? Should the courts become active in developing new concepts, such as no-fault...
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mutual-consent divorce, or intervene to resolve new controversies that reflect the interaction of insurance law and family law, because it would incorporate elements that were not present in the civil code before 1900? Are those new legal developments to be considered "foreign" law because of the political status of Puerto Rico? The increase in citizens' use of the courts to resolve everyday controversies reflects the legal system's transformation to connect with the changes the people have experienced in Puerto Rico throughout this century. In many significant ways, the courts changed as Puerto Rico did, becoming part of trends that are found in other Latin American countries.

The Legal System Since the 1970s

By the end of the 1960s and the beginning of the 1970s, the consequences of the rapid modernization process in Puerto Rico began to show. The population continued to grow, with 50 percent under twenty-one years old, in spite of the widespread migration to the United States. Industrialization increased while agriculture deteriorated. The new industries did not provide enough job opportunities. Although industrial development policies were promoted by the government, unemployment continued to be an acute problem. The rural population experienced an excessive displacement into the urban regions of the island and the large cities of the eastern United States, while diverse sectors saw changes in their living conditions. The increase in random violence was one of the qualitative changes of this period (Silvestrini 1980, 113). Interpersonal and communal tensions multiplied with the disappearance of the most traditional means of resolving conflicts. Violent crimes, thefts, and car thefts increased in such magnitude that everyday life became difficult. Little by little, the criminal courts and the civil courts became the preferred methods for people to resolve their new urban problems: contractual disagreements, disruption of family relations, labor disputes, and control of criminality.

The government's answer to the people's demand was to expand the courts, create more positions for judges, and appropriate more funds for attending to the increase in the number and complexity of cases. For example, at the beginning of fiscal year 1974, the unified court system had a total of 137,473 civil, criminal, and transit cases pending from the previous year. During the year 1974–75, 566,168 new cases were presented to the court for a total workload of 703,318 cases. The annual report of the Administración de los Tribunales (1974–75, 13) shows that in this year the courts resolved 556,009 cases, leaving some 14,534/26 without resolution at the end of the year. The absolute number of cases is significant because if we consider the total population of Puerto Rico at the time (2,721,754 persons in 1970), at least in theory, one of every four persons could have had a case before the court.

The increase in cases reflects again an expansion of the process of modernization. There was an increased sense that people with claims could go all the way to the Supreme Court to obtain a remedy. A glance at the distribution of cases within the Supreme Court in 1974–75, for example, shows that 41.45 percent of the cases were civil revisions and 37.4 percent were certiorari (which were predominantly of civil nature), and only 4.4 percent were criminal appeals. When the nature of the cases decided by the Supreme Court in 1974–75 is examined, actions in civil cases are predominantly of tort nature instead of a constitutional character as would be expected. Likewise, the majority of criminal cases are related to drug laws, a social problem that by the 1970s was becoming widespread. Therefore, these trends further support the thesis that a greater dependence on the courts to resolve social matters was slowly emerging.

In the annual report for 1974–75, the judiciary considered that one of the most striking problems was the increase in the number of cases presented in the Supreme Court and the consequent delay in their disposition (Administración de los Tribunales 1974–75, 5). In accordance, the Puerto Rican legislature amended the Law of the Judiciary in August 1974 to create the Appellate Division of the Superior Court. The division would function in sections with at least three judges for consideration of each case in appeal.

If we consider that criminal appeals constituted only 4.4 percent of the cases before the Supreme Court, this measure by itself could not have succeeded in alleviating the court's calendar. In spite of this measure, the appeals continued to grow and the Supreme Court continued to have an overloaded calendar, supporting again the thesis of society's overlegalization.

Another significant reform was approved by the Puerto Rican legislature in 1974—the requirement that municipal judges must be lawyers who are admitted to the bar.9 This new requirement responded to criticisms as early as the beginning of the twentieth century that justices of the peace did not have to have a legal education. With this step, the process of professionalizing the system advanced because it would mandate a common basis of training for all judges. Through the bar examinations, the Supreme Court also had control over the formal education and training standards of the legal profession.

The goal to organize the legal system scientifically as a foundation for modernization defined the Supreme Court's efforts to reform the legal system in the 1970s. In 1973, the Puerto Rican legislature approved a law authorizing the judicial branch to establish and regulate an independent system of personnel. It also legislated the establishment of an autonomous budget for the judicial branch that would not depend on the executive but would
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be directly approved by the legislature. Two years later, the Office of the Administration of the Courts was restructured with the responsibility of establishing a "scientific" personnel system, a more efficient method of handling the caseload, and the collection of effective statistics about the system. The office was also charged with developing effective budget management practices. This scientific reform, as it was called at the time, became the practical framework of the legal system but did not necessarily solve its problem. Overall, these measures affirmed the principle of a judiciary autonomous from the rest of the Puerto Rican government but added complicated, sometimes more bureaucratic, obligations. The judicial branch then had to develop job descriptions, create administrative norms, and administer its own budget. The 1975 annual report of the judicial branch incorporated the concept of modernization when it explained that the changes it had made "accorded with the requirements of our time" (p. 38). As part of the reorganization, more reliable judicial statistics and the introduction of computers were considered indispensable, not only to maintain up-to-date information but also to better serve the lawyers and citizens.

Part of the reorganization of the legal system was the creation of direct service programs for the users. These services were not legal in nature but social and extended the work of the courts even farther from the judicial. The Diagnostic and Treatment Clinic for Juveniles, for example, had as its goal to respond to "the need for studying the juvenile in all that could explain the antisocial conduct that occasions his appearance at the Court" (Administración de los Tribunales 1974–75, 45). To this effect, the services of social workers, psychologists, psychiatrists, and neurologists were recruited. Juveniles with charges before the superior court were referred to judges or court social services personnel to receive direct help. Definitively, this was a novel expansion of the court's roles and its entrance to the new world of sociomedical and social science research. Beyond referring people to the services of the independent professionals, the court contracted with counselors and psychologists who provided assistance in direct programs under the auspices of the courts. These initiatives strengthen the courts' participation in the welfare state, as the legal system serves as intermediary in interpersonal and community relations.

As part of these new court functions, the family relations division expanded. In this sphere, the legal system also went beyond its traditional responsibilities and undertook a social function as keeper of the "principle that the family is the primary base of society and a source of great security and well-being for the individual." The courts organized direct services "to guide the strengthening of the family to avoid its disintegration, taking into account the self-determination of the individual in relation to the cultural and social values existing and in the process of change" (Administración de los Tribunales 1974–75, 51). This social rhetoric, in line with the social and civil rights reform that characterized the times, made the legal system's new social responsibility stand out—that of counteracting the other paths or the undesirable results of the modernization policy promoted by the government. The cited annual report from 1975 concludes on this particular point: "The familial disintegration could result in the abandonment of children, the deterioration of conjugal and parental relations, the maladjusted and delinquent juvenile and adult" (51). Therefore, the legal system would acquire a much more proactive role in social reform—that is, the task of avoiding possible deterioration resulting from the modernization. Thus, it offered direct services to those whom the system touched in one way or another.

These trends continued throughout the 1980s. Year after year the Office of the Administration of the Courts complained of overloaded calendars, lack of funds for administering the courts, and the need for more personnel. But there was little recognition that the legal system had become increasingly complex, not necessarily because it handled more cases per capita, but because the courts had acquired additional functions. A decade later, the superior court had one hundred judges and a budget of more than $82 million to attend to 172,432 criminal and civil cases. The family relations cases took up the largest percentage of the volume of unresolved cases (Rama Judicial de Puerto Rico 1988–89, 19).

Judicial reform was not again considered until the 1990s, even though some of the problems of the system had existed since the 1970s. Among the issues raised in the public debate was the recognition of the right to appeals in civil cases. Also included were the workload of the Supreme Court and the inequality of work among judges, where some courtrooms had overburdened calendars and others had significantly fewer cases. The Law of the Judiciary was amended in 1991 to include the municipal court in the court of first instance, therefore changing its character to an adjudicative court. Although the position of municipal judge had been created in 1974 when the law provided for the gradual elimination of the justice of the peace post, the old municipal court had only investigative functions and issued bail, arrest, and search orders. The municipal court remained as a separate level of courts and without any adjudicative responsibilities until 1991 (Rama Judicial de Puerto Rico 1988–89, 19; 1992–93, 5). This change was the final step in the creation of a unified legal system for the jurisdiction of Puerto Rico as it had been intended since the constitution was enacted (see Figure 10.2).

Nonetheless, the principal debate for reform was over the need to create an appellate level in the court system. The commonwealth constitution created the Supreme Court as the final appeal level, establishing its competency in a limited number of actions and giving it the power to review judgments handed down by the courts of first instance. For many years, different
studies of the Puerto Rican judicial branch suggested creating an intermediate forum for appeals, but the idea was rejected because of its high cost and potential for lengthy delay of any final resolution of the cases, creating another step in the legal system. It was not until 1987 that the creation of an appellate division was considered in a positive way, a court “with competency to oversee civil, criminal, and administrative cases accompanied by the proposal of reestablishing the right to appeal in civil cases resolved by the Superior Court” (Informe de la Comisión Asesora del Juez Presidente sobre la Estructura y Funcionamiento del Tribunal de Primera Instancia 1987, 5).

The justification for this new court was predicated on two principles. First, the structure favored the idea of appellate justice as collegial, where a decision made by a panel of judges was better than one made by an individual. Second, it tried to resolve the inequality presented by the civil cases that were decided in first instance by the superior court. Beginning in 1974, the district and municipal court decisions could be appealed in a collegial forum at the superior court, but the civil cases presented in first instance in the superior court, except those accepted in revision by the Supreme Court, did not have anywhere to go on appeal.

Accordingly, a bill for the creation of the appellate court was proposed in 1992. The bill tried to address the inequality of opportunities for litigation, stating that “it would give to all litigants a real opportunity, at present unavailable, for the decisions of one judge in the court of first instance to be reviewed by several judges of a superior level. Through this forum, we can answer the demand for a social democratic conscience dedicated to the goal of equal justice for all” (Departamento de Justicia 1992). A new law was passed that created the Puerto Rican appellate court as a court of intermediate record between the Supreme Court and the court of first instance. Furthermore, the law gave the right of appeal in civil cases; the right of appeal had not previously existed as such and was available only through discretionary review. In its first year of operation, the Supreme Court referred 526 cases to the appeals court, reducing almost by half the number of cases pending before the Supreme Court (Rama Judicial de Puerto Rico 1993, 14). The life of this appeals court, nonetheless, was not long. It became entangled in a political polemic and was dissolved within a year (Alvarez González 1996; Comentario 1994).

Although the 1992 law was repealed in 1993, the idea of an appellate court still had support, and a new Law of the Judiciary in 1994, as amended by Law Number 248 on December 25, 1995, created the circuit court of appeals. This court serves as an intermediate court between the court of first instance and the Supreme Court, constituting a single section seated in San Juan. The principal goal of this reform was to lessen the Supreme Court’s
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workload by providing an appellate level to attend to a large part of the pending cases. Although there still has not been a complete evaluation of this court's operations, the director of the courts administration reported that the cost of the judicial reform as of March 1999 surpassed $37,915,708. Between 1995 and 1999, 23 new appeals judges and 182 new judges of first instance have been named (Bauernfeind 1999, 941, 947).

The new layer in the legal system, like the increase in the number of judges and the budget, supports the thesis of this chapter. In the 1990s, the legal system expanded even more. The number and the complexity of the cases increased, more judges were appointed, and the number of court functionaries grew, along with the operational budget for the system. Unfortunately for Puerto Rico, legal issues are only resolved by the “highway to the courts.” Public policy efforts to develop alternative dispute-resolution methods have been limited and have not gained sufficient credibility to substantially relieve the courts’ calendars. Neither the bar association nor the law schools have incorporated this agenda as part of the solution to the problem of excessive legalization of society, perhaps because the profession sees itself as directed toward litigation. Over time, in spite of the intense criticism by academics and jurists, the legal system has maintained the trust of the thousands of citizens that resort to its courtrooms in search of solutions to their claims.

Conclusion

A century after the American occupation of Puerto Rico and after various judicial reforms, prominent Puerto Rican attorneys and jurists continue protesting that “our law [referring to the Puerto Rican legal system] is in good measure the law of others. Vast zones of judicial order are governed by laws in whose creation our people did not participate or, when they did, their participation was for the great part symbolic” (Trias Monge 1978, 242). According to José Trias Monge, even when the judicial reforms created their own models, the judicial system was a victim “of a defective vision” and adopted “basic premises of the old law . . . in bewildering and inconsistent form[s] . . . . We altered the roles of case-law, legislation and doctrine, though court decisions still reflect a marked ambivalence about these extremes. Our view of the law is closer to the Anglo-Saxon tradition than to that of civil law countries” (243). Trias Monge concludes that “it is vital that Puerto Rico finally formulate its own law” (249).

We have seen, nonetheless, how the practice of law has forged the legal system, how it has tried to respond to the problems that Puerto Ricans confront in their daily lives. We have also documented how citizens, in spite of the delays and limitations of the legal system, trust it by using it. The contrary would be to assert that the clients of the legal system are mistaken because they increasingly use a system to which they object. The legal systems are continuously changing, because they are part of historical processes that are continuously changing (Friedman 1975). These transformations adapt to and adopt new styles, approaches, and practices. They are validated or not in their acceptance and use, and some are even contradictory (Munger 1990; Stookey 1990). Legal systems are not complete nor is their structure set in a straight line, because they respond to and form part of the historical processes of a country (Friedman 1975). The theoretical analysis of why and how the legal system in Puerto Rico became institutionalized, in spite of the colonial context in which it was organized, goes beyond the scope of this chapter. But it is valuable to mention the intricate ties between the processes of giving credibility to the system and the transformations that have been occurring in society. Although some scholars have explained the process as a form of support and sanction to the exercise of power, it seems that in the case of Puerto Rico, the legal system has also helped to mold those power relations. This double bind has possibly facilitated the recognition of the notion of the rule of law as a social value in spite of the internal and political contradictions the legal system has faced (Sugarman 1981; Rivera Ramos 2001). Furthermore, as Gordon (1984) argues, a good part of the system provides the ideological and linguistic tools for those who exercise power, as well as for those who resist the power, by marking off the boundaries between the camps that fight for it.

In Puerto Rico, once the legal system was rooted in the rule of law by the constitutional reform of 1952, a certain critical trust grew that promoted its growth. The legal system legitimated at the same time that it created the categories through which it would function and be evaluated in the social realm. In this way, it formed a strong knot between legal and social processes (Bourdieu 1987). Even further, this popular legitimation of the process is related in part to the understanding by its clients that the legal system provides a “scientific manner” by which to solve controversies. Part of the credibility ascribed to the system comes from the belief that using scientific methods in the practice of law and in the courts would guarantee “the infallibility of knowledge and articulation of the social reality in the laws” (Nazario Velasco 1999, 29).

Through this chapter, I am hoping to open an area of debate and research that explores the diverse issues raised by the legal system's transformation as the century progressed—and its relation to the social and economic changes in Puerto Rico. These issues include the establishment and use of the new juvenile courts, the bureaucratization of the relationship between the citizen
and the state, the surge of hundreds of administrative law cases, and, most important, the structure of criminal justice. A study of the new legal culture accompanying these changes, although difficult, could illuminate the apparent gap between the assertions of the powerful groups in the judicial profession and the way in which other sectors of the profession have understood, used, and criticized the legal system. Finally, it would be interesting to explore "the reform spirit" that dominated through distinct manifestations and stages the work of the government and civil society and the results of these reforms that continue to infuse the courts. After all, as Lawrence Friedman (1975) has stated in his book The Legal System: "Social theories of law suggest that at any given time existing rules reflect rough accuracy those social forces actually bearing on the subject of the rules. . . . [Therefore] the legal system will probably reflect all social forces in proportion to their influence and power" (307). Because of this, we should not consider it strange that when confronting the critical theories about the collision of legal systems in Puerto Rico, we find the citizens using the system as a contemporary adaptation in their own process of historical and cultural creation.

Notes

1. Starting with the reforms of 1952, the legal system became "Puerto Ricanized"—that is, it began to respond more directly to the Puerto Ricans' way of thinking and to the needs of the country. The theorists continued to question its legitimacy, but its users, much less so. The question of how the legal system won legitimacy in the minds of much of the legal profession and the public is still open. This chapter will present the general trends, but more detailed studies of this issue have yet to be developed.

2. Immediately after a military government of the United States was established in 1898, the U.S. Congress began to study conditions in its newly acquired territory. One of the factors it watched carefully was the legal system, which it considered to be a fundamental piece in the process of Americanization and cultural change. This idea was planted by Governor Davis in congressional hearings in 1900, when he stated: "One subject of great importance, concerning which almost all Americans wish to ask questions, is the judiciary. A complicated system of procedure existed, one which we could not understand or could not master with facility. After long consultation and the preparation of drafts or projects outlining changes, the leading lawyers of the island and the leading judges, speaking through a judicial board, recommended a revision of the system of procedure. . . . These changes were recommended by native Puerto Ricans, and they were implanted by me as military commander, and much improvement has resulted" (U.S. Congress 1900, 5).

3. The founding of the University of Puerto Rico in 1903 was part of this initial process of modernization, as much for its organization as for its training of a large proportion of the professionals who embarked on the work to realize the changes.

4. In 1938, the law program established a bachelor's degree as a requirement for admission. In 1944, the Law School of the University of Puerto Rico joined the Association of American Law Schools and in 1945 was accredited by the American Bar Association.

5. Some of the most recent studies of the judicial conference, such as the report on gender discrimination in the courts, are good examples of this trend (Tribunal Supremo de Puerto Rico 1995).

6. It is interesting to note that both measures used the American legal system as a model. At both the federal and state levels, there were legal services available to the poor. The measures also promoted the professional development of court personnel beyond the law school arenas.

7. Furthermore, in criminal cases there was an increase in the number of police, crime control agencies, and prisons (Silvestrini 1980).

8. This would serve appeals in the criminal cases processed in the superior court through certiorari to review final sentences of the superior court in those cases generally initiated in the district court and in other criminal matters that the superior court disposed of (Law Number 11, August 8, 1974).

9. Law Number 7, August 8, 1974

10. The organization of the Office of the Administrator of the Courts in 1975 is complex: three departments, each with at least three divisions, and four other divisions related to each other through planning, auditing information, organization, methods, and legal issues. There were two administrative divisions (auxiliary services and personnel). The most interesting was the social services division, which attended to family matters, juveniles, and child support. It provided direct services to the users and their attorneys (Administración de los Tribunales 1974–75, 30).

11. For example, in 1975 the administration of justice system had 2,791 employees: 167 in the Supreme Court; 258 in court administration; 1,438 in the superior courts; 786 in the district courts; 15 municipal judges; and 127 justices of the peace (Administración de los Tribunales 1974–75, 37).

12. The Office of the Administrator of the Courts also developed a mechanism to collect child support payments and to provide statistical information on criminal offenses to other government agencies. It planned to collect computerized information on the criminal files of people, vehicles and stolen articles, arm registries, missing persons, persons on bail, fugitives, case calendars, criminal statistics, and other data (Administración de los Tribunales 1974–75, 38, 39).

13. In 1988–89, there were 118,999 criminal and civil cases presented, adding to the 33,433 pending. Of these, 233,256 were resolved, leaving 60,074 pending (Rama Judicial de Puerto Rico 1988–89, 19).

14. Law of the Judiciary, sec. 31. The superior court has by law the responsibility to attend to the appeals proceeding from the district court and municipal court decisions (secs. 221–22).

15. This point of view had been expressed since the discussion of Law Number 115 on June 26, 1958. On this occasion, José Trías Monge proposed that instead
of creating a new appeals level, the positions of superior and district court judges should be strengthened (Diario de Sesiones la Asamblea Legislativa de Puerto Rico [Diary of the Legislative Assembly Sessions] 1958, 10, 66, 1356–66). Later studies concurred with this position, showing that in addition to raising the cost, it delayed the final resolution of the cases. For a complete summary, see Comentario en torno al Tribunal de Apelaciones (1994, 143).

16. For details, see P. del S. 1313 (Departamento de Justicia 1992).
18. Law Number 11, June 2, 1993, repealed the appeals court law. Immediately, the judges named to the court appealed the decision to the Supreme Court, but the issue became moot with the approval of the next Law of the Judiciary.
19. The circuit court of appeals is composed of thirty-three judges. The judges are appointed by the governor of Puerto Rico with the advice and consent of the Senate and perform their duties for sixteen years. The court is divided into eleven panels, each one with three judges, distributed territorially. The circuit court of appeals reviews through the appeals system all the final sentences, civil or criminal, dictated by the court of first instance (Law Number 248, December 25, 1995).
20. In addition to the new judges, others were promoted to create a total of 355 judges in Puerto Rico. These are divided as follows: 7 Supreme Court judges, 33 circuit court of appeals judges, and 315 court of first instance judges.

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Over the last quarter of the twentieth century, Spain has experienced a dramatic transformation as a result of three basic and interlocking processes of change. Since the mid-1960s and in the wake of the postwar economic recovery of Western Europe, Spain has experienced an intense process of economic growth that ultimately placed it among the most developed countries in the world. On the other hand, in the second half of the 1970s, Spain returned to democratic rule under the form of a parliamentary monarchy, with free elections in 1977 and the enactment in 1978 of the current constitution. Finally, in the mid-1980s, Spain formally became a member of the European Community—now the European Union (EU). By the end of the 1990s, Spain became one of the eleven EU members that agreed to have their national currencies replaced by a common new currency (the euro) as of March 2002: apparently a merely economic measure, but in fact a decision full of symbolic meaning in terms of national sovereignty and supranational integration. (For a political chronology, see Table 11.10 at the end of the chapter.)

Economic development, democratic recovery, and European integration are thus the elements that have marked Spanish life in a radical way over the last three decades. The aim of this chapter is to analyze the degree to which these deep processes of change may have influenced Spanish legal culture. The way in which a system of justice is organized, the way in which it performs its functions in everyday practice, and the way in which it is perceived and evaluated by the citizenry represent instances in which legal cultural fac-