

THE STRUCTURE OF THE PUERTO RICAN LEGAL SYSTEM

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In this short presentation I will try to call your attention to three socio-judicial foundations or building blocks of our legal system which any foreign observer should be aware of. The first and main one is political. Puerto Rico was acquired by the United States as a result of the Spanish-American war. The occupation of Puerto Rico by the United States took place on July 25, 1898. The war concluded after the parties signed the Protocol of Peace on August 12, 1898. Under the Protocol, Puerto Rico was formally transferred to the military control of the United States. Since early in the occupation of Puerto Rico, the US government took measures to replace the existent legal system with a more familiar one replacing, *inter alia*, Spanish criminal law, administrative law, civil and criminal procedure laws and corporate law with US law. It was no different with most institutions which they found in Puerto Rico. The executive branch was reorganized, the powers of most town halls were extensively curtailed and Courts of Justice in the Continental model were abolished and new ones were established following the prevalent American Model. As my concern here is with the structure of our legal system, I will restrict the discussion to the development of our judicial system, but we should keep in mind the various implications all these sudden changes brought upon the whole political structure.

Before the arrival of US troops in 1898, the judicial structure in place in Puerto Rico was la *Audiencia Territorial* (Territorial Courts). In 1898, general Miles changed the name of the *Audiencia* to *Tribunal Supremo de Justicia* (Supreme Court of Justice) although he did not change the composition of the court. Nevertheless, immediately after, during the government of General Brooke the Supreme Court was eliminated and replaced by a new Supreme Court following the Supreme Court Model in other states of the Union. Lower courts were replaced by district courts resembling the US system. The Common Law adversary system supplanted the previous inquisitorial model in existence. The existing Civil Law model with an established hierarchy of formal legal sources to be employed in the Island was gradually changed by the courts toward one with a strong influence of legal precedents and case law, more in the way of the Common Law Tradition. US Federal Courts in Puerto Rico were also brought to Puerto Rico in June 27, 1899.

On April 2, 1900, President William McKinley signed the Organic Act of 1900, also known as the Foraker Act. The Act established a civil government for Puerto Rico. Part of that government would consist of elected members, i.e. a House of Representatives with 35 elected members, although most top executive positions, including the governor, were appointed by the President. Of no less importance is the fact that the Foraker Act established that all federal laws of the United States, were to have effect on the Island unless found to be locally inapplicable. Later, on May 2, 1917, the Foraker Act was replaced by the Jones-Shafroth Act.

This brings us to the second element we must be aware of: the Jones Act. Our system of government in Puerto Rico took a turn toward a clearer separation of

powers among an executive, legislative and judicial branch. It also brought about a bicameral legislature for Puerto Rico. Perhaps, what has been even more important, or significant, this act conferred US citizenship on all citizens of Puerto Rico along with the recognition of certain civil rights to be observed by the government of the island.

A last and more recent step in the Constitutional Development of the Island has been Public Law 600. This law, approved on July 3, 1950 and in the context of UN anti colonization efforts, authorized Puerto Rico to draft its own constitution. While it is clear that US maintains ultimate sovereignty over Puerto Rico, the preamble of the law describes the new agreement as something “in the nature of a compact”. This has led to extended discussions about the nature of the political status of the Island. For some that “compact” represents the intent of Congress of granting the Island a high degree of autonomy while establishing a status that cannot be changed by the will of any of the parties alone. On the other side, some argue that Puerto Rico is still subordinate to the will of Congress and ultimately the destiny of Puerto Rico falls in their hands.

In July 25, 1952 the Constitution of the Commonwealth of Puerto Rico came into force. Our Constitution is based on that of the US, and Constitutional Law in general follows the US model. The Constitution establishes a republican form of government, it contains a bill of rights similar to that of the US Constitution, but is more extensive and specific than the latter, to the extent of containing clauses applying *ex proprio vigore*. As for the US influence on Puerto Rico’s legal system, the Constitution explicitly incorporates *Marbury v. Madison* on Article V, reserving the power of declaring a law unconstitutional to the judicial branch. Given that Puerto Rico is a commonwealth of the United States, by virtue of the Supremacy Clause the Constitution, as well as all other Puerto Rican laws, are bound to adhere to the postulates of the U.S. Constitution, laws and treaties.

The third and last important element that I think should be brought to your attention was already mentioned as we introduced our system. Puerto Rico still follows a civil law tradition and, thus, courts use positive law as the main source of law for resolving controversies before them. But, if until now, it has remained essentially a civil law jurisdiction, the presence of common law in many areas is without question a principal component of our system. During the first decades of the last century, courts began interpreting both US law, as well as existent Spanish law, in the light of US law and precedents. Judges, some of which were North Americans, began increasingly adopting the American model. Cases with multiple opinions began proliferating, imitating American Court decisions, and making reference to previous decisions, i.e. the incorporation of the doctrine of *stare decisis*, gradually became the form of resolving cases. However, after the 1952 Constitution came into force, the preeminence of positive law as the main source of law has been preached by leading judges at the Supreme Court. This current of thought was particularly prevalent during the presidency of Justice Trías Monge during the 1970’s and 1980’s. Most recently, a new Penal Code entered into force in 2004 which is more focused on Continental Criminal Law than its antecedent.

The structure of our legal system, as far as it has evolved in the past century, shows constant interaction of civil law and common law principles. Public Law

today is mainly modeled on American Institutions. In Commercial and Financial areas, the common law influence has been dominant. The country has had to navigate in somewhat uncertain waters since the first two decades of American presence, particularly after the “insular cases” and *Downes v. Bidwell* (182 U. S. 244, 1901), where the US Supreme Court characterized Puerto Rico as “foreign” in a domestic sense. The political situation in which Puerto Rico is embedded has considerably distanced Puerto Rico from civil law as it developed in Continental Europe and Latin America. For over three centuries, Puerto Rico was governed by Spanish laws, decrees and administrative orders. After 1898 several areas of local law have been deeply altered. Puerto Rico is a living example of the clash of two successful legal systems, and the search for a distinctive juridical identity.