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Cuba, Puerto Rico, the Civil Code, and the Problem of Transculturation

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CUBA, PUERTO RICO, THE CIVIL CODE, AND THE PROBLEM OF TRANSCULTURATION

*Pedro A. Malavet**

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Cuba y Puerto Rico son
de un pájaro las dos alas.

Puerto Rico ala que cayó al mar
que no pudo volar
yo te invito a mi pueblo
y buscamos juntos el mismo cielo.
—Son de Cuba a Puerto Rico, Pablo Milanés¹

[Cuba and Puerto Rico are
the two wings of a bird.

Puerto Rico is the wing that fell into the sea
that could not fly

* Professor, University of Florida Frederick G. Levin College of Law; JD and LLM, Georgetown University Law Center. I am extremely grateful to my college and to our hosts for allowing me to participate in the May 2016 conference. I would also like thank my college for its support in the form of the research license that has allowed me to prepare this talk. I am also very grateful to Matthew, who prepared an excellent English translation of my original essay, which I submitted and presented in Spanish.

1. PABLO MILANÉS, *Son de Cuba a Puerto Rico, on QUERIDO PABLO* (Ariola, 2000) (translation by author).

I invite you to my town
And we will search the same skies together.]

I. INTRODUCTION

Cuba and the island where I was born, Puerto Rico, share a cultural tradition and evolution forged principally during our first colonial period under Spain. But we also have in common the influence of the second colonial period under the United States. As a law professor, as a jurist, and as a researcher, I am interested in conducting a comparative study of the effects of the second colonial period on the evolution of civil law on our respective islands.

For our islands, four hundred years of historical, cultural, and legal evolution culminated in the adoption of the Spanish Civil Code of 1889 when Queen Regent María Cristina of Austria, on behalf of her minor son, the future King Alfonso XIII, signed the royal decree enacting it on July 31, 1889.² This Spanish code ends a process begun by a special commission in 1843 that produced the draft of 1851. But it was not until the 1880s that the Spanish legislature finalized the code.³ For Spain, the code represents the development of private law reaching back to the Roman era, followed by the creation of Foral (Regional) Law after the fall of the Roman Empire and the Spain of the Christian “Reconquest” of the Muslim kingdoms.⁴ For Cuba and Puerto Rico this code is the final legacy of the empire that created us, and, although we lacked political sovereignty, it produced what already were the Cuban and Puerto Rican peoples, at least in terms of cultural consciousness.⁵

Cubans and Puerto Ricans are, both in positive aspects and in many negative ones, the social, cultural, and legal products of four hundred years of Spanish colonialism. Then, in 1898, the Spanish-American War

2. Luis María Ribó, *El Código Civil y Usted* 51 (1970). Spain implemented the code by the decree of July 24, 1889, and the decree of the 31st of the same month extended its application to the overseas provinces. CÓDIGO CIVIL DE PUERTO RICO COMENTADO: TEXTO BASADO EN TÍTULO 31, LEYES DE PUERTO RICO ANOTADAS 8–9 (1984).

3. D. NICOLÁS DE PASO Y DELGADO, *DERECHO CIVIL ESPAÑOL DE LA PENÍNSULA, ISLAS ADYACENTES, CUBA, PUERTO RICO Y FILIPINAS, CONFORME AL CÓDIGO DE 1889*, at ix–xi (1890) (providing a brief historical presentation about the 1889 Code).

4. For an excellent summary of the legal history of Spain, see RIBÓ, *supra* note 2, at 13–28.

5. Regarding the development of a Puerto Rican cultural identity during the Spanish colonial period, *see generally* PEDRO A. MALAVET, *AMERICA’S COLONY: THE POLITICAL AND CULTURAL CONFLICT BETWEEN THE UNITED STATES AND PUERTO RICO* (2004); *see also* Pedro A. Malavet, *Puerto Rico: Cultural Nation, American Colony*, 6 MICH. J. RACE & L. 1 (2000).

abruptly and violently ended Spanish dominion over our islands and began a second colonial period, which continues to the present day in Puerto Rico. In the field of private law, the Civil Code, together with the Commerce Code and the Notarial and Mortgage Law, continues in effect in both islands pursuant to respective military orders.⁶ But in both Cuba and Puerto Rico, the U.S. cultural and legal tradition negatively affected the evolution of our private law, especially that of the Civil Code. In Puerto Rico, the process of *legal transculturation* continued for many decades into the twentieth century. The ex-Chief Justice of the Supreme Court of Puerto Rico, José Trías Monge, describes the phenomenon in his book *El Choque de Dos Culturas Jurídicas en Puerto Rico*.⁷ Trías Monge details how in Puerto Rico, concepts originating in common law are imposed, sometimes by accident, but also deliberately, by judges trained in the United States, with the effect of modifying and sometimes totally replacing the original purpose of the precepts of our private law of Spanish origin.⁸

Now, at this so very important historical moment in which Cuba and the United States attempt to forge a new positive political relationship, and perhaps an economic and cultural one as well,⁹ I bring a warning born of my experience as a professor of Comparative Law, as well as a student of the legal history of my country without sovereignty. I am also interested in beginning to study Cuban private law to learn how it developed between the change of sovereignty in 1898 and the triumph of the Revolution in 1959. But I begin our legal exchange with a warning about the negative effects of U.S. cultural imperialism on our civil law in the period following the war between a dying Spanish empire and an impetuous U.S. empire that had just begun. I bring you, in other words, a story *del ala que cayó al mar* [“of the wing that fell into the sea”], as Milanés sings.

II. WHAT I PROPOSE TO DO IN THIS PAPER

In this paper, I have two purposes. First, I offer a simple warning of the dangers posed by cultural imperialism in the legal exchanges that we are beginning. Second, and more positively, I invite my Cuban colleagues to educate me about what happened to the Civil Code in Cuba in the

6. JOSÉ TRÍAS MONGE, *EL CHOQUE DE DOS CULTURAS JURÍDICAS EN PUERTO RICO: EL CASO DE LA RESPONSABILIDAD CIVIL EXTRA CONTRACTUAL* 68–69 (1991) (noting that in both Puerto Rico and Cuba, General Order 101 continued the Civil Code as law).

7. *See generally id.* Trías Monge focuses especially on this issue in Chapters 4–7.

8. *Id.* at 227–45.

9. This essay was written and presented before the election of Donald Trump as President of the United States.

period between 1898 and 1959. The positive aspect should contribute to a comparative study of law in which we can understand the respective Cuban and U.S. legal cultures, using the mixed experience of Puerto Rico with Spanish civil law and the U.S. common law as part of the process of developing new bilateral relations. For my part, as a professor of comparative law, I propose to learn about the Cuban legal culture, starting with those first years of our second colonial period and their effect upon the civil law.

My focus in this essay is Private Law, that is, as we discussed with our Cuban colleagues during the conference, in general, the legal precepts included in the Civil and Commerce Codes,¹⁰ and Notarial and Mortgage law. Dr. Luis María Ribó, referring specifically to the Spanish Civil Code, describes it as the law that “deals with things that are completely inseparable from the normal activity of all human beings integrated in a community.”¹¹ This elegant definition is useful for us, even though today we are well aware that the realities of the contemporary state impose restrictions on the so-called rules of private law and even upon the category itself. But we know that historically this “fundamental division, in the doctrine and institutions [of the law], and in contrast to *Public Law*, . . . governs the acts of individuals taken voluntarily in their own name and for their own benefit. Because of its origin and objective it is dominated by individual interest, compared to the general welfare that is assigned to the opposite category.”¹² Given our interest in the transition from Private Law in Cuba and Puerto Rico to the beginning of the second colonial period, this is not, then, the moment to explore “the modern transformations of *Private Law* by the successive invasion, and without foreseeable end, of the mandatory precepts of *Public Law*.”¹³

Two aspects of this understanding of the law are important for the development of bilateral relations between Cuba and the United States. First, the evolution of Cuban law to adapt to the new economic realities must be a major priority for the development of the Cuba of the future. During the conference in Havana, we discussed, for example, the new Zona Especial de Desarrollo Mariel (Mariel Special Development Zone, “ZEDM,” by its initials in Spanish) and its investments on a large scale.¹⁴

10. Note that the Commerce Code precedes the Civil Code in Spain.

11. RIBÓ, *supra* note 2, at 7 (translation by author).

12. 3 GUILLERMO CABANELLAS DE TORRES, DICCIONARIO ENCICLOPÉDICO DE DERECHO USUAL 146 (26th ed. 1998) (translation by author).

13. *Id.* (translation by author).

14. For the details of the Cuban government’s economic development projects, including La Zona Especial de Desarrollo Mariel (ZEDM), see Wentong Zheng, *Exploring Cuba’s New Role in the World Economy: Paths and Perils*, this issue. See also Arlin Alberty Loforte, *Mariel: En el Vórtice del Desarrollo Económico Cubano*, GRANMA (Jan. 14, 2016, 11:53 PM), <http://www.granma.cu/cuba/2016-01-14/mariel-en-el-vortice-del-desarrollo-economico-cubano-14-01-2016-23-01-41> [<https://perma.cc/7NBR-BJA9>].

Only a few weeks after the conference we received word of the new policy in Cuba with respect to small businesses, and the intent of the government to create an adequate legal framework to permit and regulate these businesses in a sensible manner.¹⁵

Second, I am thinking about something that is probably *not* a priority in the Caribbean, but *is* one on the side of the Atlantic in which I write these words (in the United States): the pending economic claims against Cuba in the United States. “The U.S. State Department says there are 5,913 certified claims against Cuba totaling \$1.9 billion plus interest.”¹⁶ U.S. courts have also issued judgments against Cuba amounting to \$4 billion, with \$3.2 billion corresponding to a judgment in favor of Gustavo Villoldo, a resident of Florida.¹⁷ These civil suits proceeded despite sovereign immunity because U.S. law removed that protection from Cuba while it was on the list of “State Sponsors of Terrorism” between 1982 and 2015.¹⁸ As a practical matter under U.S. law, the beneficiaries of these claims, which are officially recognized by the State Department or by U.S. courts, can seize Cuban funds kept in U.S. banks and even confiscate Cuban products in the territory of the United States.¹⁹

This is complicated and these are problems that the respective governments and parties must resolve. But my work as a student of comparative law is to help with effective legal communication through understanding of the respective legal cultures, which I think is an essential part of any adequate negotiation.

I suggest that it is also essential that there be a process of *Cuban* reconciliation between Cubans in Cuba and Cubans abroad, especially in the United States. I think that the law, specifically the state of the law in 1959, is an important historical point from which to produce understanding and perhaps also to provide the methodology to resolve claims through mutual agreements, possibly with the help of an

15. Michael Weissenstein, *Cuba to Legalize Small and Medium-Sized Private Businesses*, AP (May 24, 2016), <https://apnews.com/a7038453c4234c1eb3bb026a355245d4/cuba-legalize-small-and-medium-sized-private-businesses> [<https://perma.cc/43US-A3CB>].

16. Paul Guzzo, *Can Obama Administration Settle Cuba Claims Issue Before Time Runs Out?*, TAMPA BAY TIMES (May 31, 2016, 12:59 PM), <http://www.tampabay.com/news/world/can-obama-administration-settle-cuba-claims-issue-before-time-runs-out/2279654> [<https://perma.cc/V7RA-Z5UL>]. The article adds that the resolution of these claims is a priority for the United States, although they accept that it is a “complex process that will take time.”

17. *Id.*

18. The declassification by President Obama represents part of the process of *détente* that we were experiencing at the time of the conference. *E.g.*, Julie Hirschfield Davis, *U.S. Removes Cuba From State-Sponsored Terrorism List*, N.Y. TIMES (May 29, 2015), <https://www.nytimes.com/2015/05/30/us/us-removes-cuba-from-state-terrorism-list.html> [<http://perma.cc/X8D2-LVDZ>].

19. Guzzo, *supra* note 16.

independent mediation tribunal.²⁰

III. TOWARD AN UNDERSTANDING OF OUR LEGAL CULTURES

The resolution of these claims represents the past, whereas the economic development of modern Cuba represents the needs of the present. The new Cuban public policies about economic development and the legal and economic cooperation, if any, of the United States in these tasks, represent the future. Here also the project of understanding the historical evolution of private law in Cuba can be useful for promoting legal and economic cooperation between our countries. As I discussed previously, the Cuban government announced that it is going to legalize the existence and operation of small and medium private businesses.²¹ At this crossroads, as we discussed during the conference, Cuba confronts the problem of amending outdated laws:

To abolish a law for having become old does not mean that the problems that the law regulated have ceased to exist, but that they exist in a form that the law is no longer capable of resolving. As a result, the problems continue to exist and, to some extent, are presented even more radically. In the final analysis, to repeal or abolish a law because it is outdated means preparing another more modern law to substitute it. . . . And upon replacing a law that, in essential points, is outdated with respect to current problems, a social order is forced or imposed that does not take into account the realities of the people whom it pretends to benefit with its norms.²²

A comparative study of foreign law, including U.S. law, can be useful in these legal reform projects, and that is the goal of these exchange conferences between our institutions of legal education.

I see this as foremost a historical project owing to “the extraordinary relationship that exists between History and Law. History, as the ordered and scientific exposition of past events, provides us with a foundation for understanding the present. And the Civil Code is something contemporary with deep roots in the past; . . . perhaps too many roots.”²³

20. The Iran-U.S. Claims Tribunal is one example of an international, independent mediation body. *About the Tribunal*, IRAN-U.S. CLAIMS TRIBUNAL, <https://iusct.net/Pages/Public/A-About.aspx> [<https://perma.cc/2BEG-4DVJ>] (last visited July 27, 2017).

21. Weissenstein, *supra* note 15.

22. RIBÓ, *supra* note 2, at 9 (translation by author).

23. *Id.* at 12 (translation by author).

IV. LET US RETURN TO THE CASE OF PUERTO RICO

In the context of our conference and these publications, it is an enormous legal irony that the present colonial status of Puerto Rico continues to be justified by the so-called “Insular Cases,”²⁴ which were expressly confirmed most recently by the Supreme Court of the United States in a lawsuit about the detainees at the U.S. naval base in Guantánamo, Cuba. That case, *Boumediene v. Bush*, in an opinion issued June 12, 2008, allows the prisoners in Guantánamo to file habeas corpus petitions in U.S. courts questioning the legality of their arrest and incarceration.²⁵ But what is relevant to this presentation is that the majority of the court based their decision in part on the doctrine of the Insular Cases,²⁶ first expressed in the opinion of a plurality of three judges signed by Edward Douglass White in *Downes v. Bidwell*.²⁷ This decision grants the U.S. Congress “plenary” power to govern “unincorporated” territorial possessions of the country, subject solely to the limits imposed by fundamental constitutional guarantees, principally those protected by the Due Process clause.²⁸ This overturns the previous rule that the “Constitution follows the flag,” or in other words that all constitutional precepts apply in the territories as well as in the states, as decided in *Dred Scott v. Sandford*.²⁹ This opinion is of course a sad memory because its purpose was to apply three provisions of the Constitution designed to protect the legality of black slavery in the United States.³⁰ The rule articulated by White for a minority of the court became the rule when the

24. The Insular Cases of 1901 are decisions of the Supreme Court of the United States that determined how the Constitution applied to the territories acquired by cession during the Spanish-American War; the cases also necessarily established the rights of the residents of those territories. The opinions that apply to Puerto Rico are: *Downes v. Bidwell*, 182 U.S. 244, 287 (1901); *Armstrong v. United States*, 182 U.S. 243, 244 (1901); *Dooley v. United States*, 182 U.S. 222, 235–36 (1901); *Goetze v. United States*, 182 U.S. 221, 222 (1901); *DeLima v. Bidwell*, 182 U.S. 1, 199–200 (1901).

25. 553 U.S. 723, 732 (2008). The clause of the U.S. Constitution that prohibits the suspension of habeas corpus procedure applies to territory controlled by that country either *de jure* or *de facto*. See also *Rasul v. Bush*, 542 U.S. 466, 501 (2004) (Scalia, J., dissenting) (6–3 decision that habeas corpus law applies in territories that are technically under another nation’s sovereignty but that are under the effective control of the United States).

26. *Boumediene*, 553 U.S. at 756–59.

27. 182 U.S. at 340–41 (White, J., concurring in the judgment of affirmance).

28. *Id.*

29. 60 U.S. 393, 445–45 (1857).

30. U.S. CONST. art. I, § 2, cl. 3 (slaves are counted as 3/5 of a person in order to increase the number of their masters’ representatives in Congress); *id.* art. I, § 9, cl. 1 (limiting the federal legislative power to regulate slavery); *id.* art. IV, § 2, cl. 3 (stating that slaves who escape to free states had to be returned to their masters). See also JUAN F. PEREA ET AL., RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA 103–04 (2000). Note also that although their purpose was perfectly clear, the authors of the U.S. Constitution did not use the words “slave” or “slavery” in their foundational national document.

Supreme Court, in a unanimous decision, adopted it in *Balzac v. People of Porto Rico* [sic], in 1922.³¹ In *Boumediene*, the Court expressly and unanimously wrote that the rule of the Insular Cases continues in vigor, although the majority and the dissent disagree about whether the rule applies in Guantánamo.³² Inexplicably, the most recent case about Puerto Rico leaves the rule standing also, but it does so without *any* reference to the Insular Cases in the opinion in *Puerto Rico v. Sanchez Valle*, on June 9, 2016.³³ The majority of the Supreme Court writes in *Sanchez Valle* that “the United States and Puerto Rico have forged a unique political relationship, built on the island’s evolution into a constitutional democracy exercising local self-rule.”³⁴ However, the island does not have political sovereignty separate from the U.S. government.³⁵

V. GUANTÁNAMO AND THE UNITED STATES

In *Boumediene* the majority of the U.S. Supreme Court indicated that the Insular Cases established a “temporary” and “situational” rule (meaning a rule to be applied *sui generis* to specific situations and places).³⁶ For U.S. Puerto Ricans the “temporary situation” that denies us political sovereignty has lasted 119 years. This reality, the colonial status of Puerto Rico and Guam (the two islands ceded to the U.S. control by the Treaty of Paris)³⁷ was totally ignored by the majority in the court’s decision.

But, once again from my point of view, *ironically*, all of the Justices of the Court maintained that political sovereignty over the U.S. military base in Guantánamo belonged to the government of *Cuba!*³⁸ The *control* of the naval base belongs to the United States, from its legal perspective, based on a “treaty” and later a lease agreement between Cuba and the United States.³⁹ The United States claims the treaty is of infinite duration. For this reason I think that my colleagues in Cuba understand perfectly

31. 258 U.S. 298, 304–05 (1922).

32. *Boumediene v. Bush*, 553 U.S. 723, 764 (2008) & *id.* at 839 (Scalia, J. dissenting).

33. ___ U.S. ___, 136 S. Ct. 1863 (2016) (searching for “Insular” or the names of the cases mentioned *supra* note 24).

34. *Id.* at 1868.

35. *Id.* at 1874.

36. *Boumediene*, 553 U.S. at 758–59.

37. Treaty of Paris, Spain-U.S., arts. I, II, Dec. 10, 1898, 30 Stat. 1754 (Spain cedes Puerto Rico and Guam to the United States). In the same treaty, Cuba was technically given its independence. *Id.* at art. I.

38. *Boumediene*, 553 U.S. at 726.

39. *Id.* at 753–54; *see also* Cuban-American Treaty, Cuba-U.S., art. I, Feb. 16–23, 1903, T.S. No. 418 [hereinafter Cuban-American Treaty 1903]; Lease to the United States by the Government of Cuba of Certain Areas of Land and Water for Naval or Coaling Stations in Guantánamo and Bahía Honda, Cuba-U.S., July 2, 1903, T.S. No. 426.

my frustration with the doctrine of the Insular Cases.⁴⁰

VI. THE JUDICIAL TRANSCULTURATION OF PUERTO RICAN LAW

Puerto Rican Law is the product of the coexistence of the Spanish civil law that we inherited and the system of common law and of U.S. public law that was imposed during the last century. The foundation of private law in Puerto Rico is the Civil Code of 1930, an amended edition of the 1889 code.⁴¹ This includes, of course, the law of contractual and extra-contractual obligations. In 1979, after decades of frustrating Anglo-Saxon influence on bad interpretations of the code, the Supreme Court of Puerto Rico delivered its judgment in *Valle v. American International Insurance Company*.⁴² This opinion of the highest court on the island overturns all previous opinions that used principles of common law to interpret the Civil Code of Puerto Rico.⁴³ The court indicated that the legal field was occupied “*de manera formal y sustantiva*” [both in form and in content] by the civil law system.⁴⁴ This decision was upheld at the federal level by an opinion of the First Circuit Court of Appeals in *Santiago v. Group Brasil, Inc.*⁴⁵ The Puerto Rican court clarified that the solution of legal problems involving the application of articles of the civil code requires the analysis and methodology of the civil law tradition.⁴⁶

This decision, and the vigilance of the court, ended the long period of unjustified interpretation of our civil code according to principles of common law. But this bad practice lasted multiple decades and produced

40. Cuban-American Treaty 1903, *supra* note 39, at art. III. Article III says in English: “While on the one hand the United States recognizes the continuance of the ultimate *sovereignty of the Republic of Cuba* over the above described areas of land and water, on the other hand the Republic of Cuba consents that during the period of the occupation by the United States of said areas under the terms of this agreement *the United States shall exercise complete jurisdiction and control over and within said areas* with the right to acquire (under conditions to be hereafter agreed upon by the two Governments) for the public purposes of the United States any land or other property therein by purchase or by exercise of eminent domain with full compensation to the owners thereof.” *Id.* (emphasis added).

41. CÓDIGO CIVIL DE PUERTO RICO, COMENTADO, HISTORIAL 8–9 (1984).

42. 8 P.R. Offic. Trans. 735 (1979).

43. *Id.* at 738.

44. *Id.* at 736.

45. 830 F.2d 413, 415 (1st Cir. 1987). Federal courts of the United States must interpret the laws of a state or territory in accordance with the judicial doctrine of the highest court of the respective state or territory, according to the ruling of the Supreme Court of the United States in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938).

46. *Valle*, 8 P.R. Offic. Trans. at 736. The Supreme Court of Puerto Rico, for example, has refused to consider opinions of the Supreme Court of Louisiana interpreting articles of its Civil Code that are textually identical to that of Puerto Rico, when those decisions do not cite sources of interpretation from the civil law tradition, especially the work of well-known authors. *Gen. Office Prods. v. A. M. Capen’s Sons*, 15 P.R. Offic. Trans. 727, 730 (1984).

legal errors that are extensively discussed in Justice Trías Monge's book. I will limit myself to discussing briefly the mechanism of transculturation of Puerto Rican Law: judicial opinions signed by U.S. judges or by those of U.S. appointment principally in two courts: the Supreme Court of Puerto Rico and the U.S. District Court for the District of Puerto Rico ("federal court").

Today the federal court of Puerto Rico, like any other court under Article III of the U.S. Constitution, is created by appropriate legislation of Congress.⁴⁷ However, during the period of the transculturation the judges of the federal court and of the Supreme Court of Puerto Rico were nominated by the President of the United States subject to confirmation by the Senate, a legislative act. Originally the federal court was in the category of "Article I courts" between its creation by military order in 1899 and during the terms covered by legislation of 1900 and 1917,⁴⁸ until 1952, when it was changed to an "Article III" court. The Organic Act of 1900 (Foraker Act)⁴⁹ and Jones-Shafroth Act of 1917 assigned the power of nominating judges to this court to the U.S. President. The Jones Act also permitted the U.S. President to designate judges of the Supreme Court of Puerto Rico to preside over cases in the federal court when there was a vacancy in the latter court.⁵⁰ While the federal court for Puerto Rico falls under Article III of the U.S. Constitution, the president's power to nominate judges is based on Article II.⁵¹

The Supreme Court of Puerto Rico is the highest court on the island and operates as a court of appeals.⁵² The Governor of Puerto Rico nominates judges of the Supreme Court of Puerto Rico, a result of the adoption of the Constitution of Puerto Rico in 1952.⁵³ But from 1901 to 1952, the U.S. President nominated those judges pursuant to the organic laws that applied to the island in those years.⁵⁴ During that entire period Puerto Rico had no intermediate court of appeals, because the Court of Appeals of Puerto Rico is of recent creation. For this reason, control of the Supreme Court and the federal court essentially establish control over

47. 28 U.S.C. § 119 (2012) ("Puerto Rico constitutes one judicial district. Court shall be held at Mayaguez [sic], Ponce, and San Juan.").

48. Foraker Act, § 34, Pub. L. No. 56-191, 31 Stat. 77, 84 (1900) (the first "organic law" approved by the U.S. Congress to establish a system of government for the island; it also refers to the relevant military orders). Jones Act, § 41, Pub. L. No. 64-368, 39 Stat. 951, 965 (1917) (the second "organic law," continuing the existence of the court).

49. Foraker Act § 34.

50. Jones Act § 41.

51. U.S. CONST. art. II, § 2. The President of the United States has the power of nomination under Article II. *Id.* art. III, § 1. The most important effect of this change is that the appointment of federal judges in Puerto Rico is now for life, and not for a finite period of years.

52. CONST. P.R. of 1952, art. V, § 3.

53. *Id.* art. V, § 8.

54. This occurred first under the Foraker Act § 33 and later under the Jones Act § 40.

the case law of Puerto Rico.

The U.S. President appointed Anglo-Saxons from the continental United States to all of these posts. These judges, educated in the common law, then interpret the private law of Puerto Rico using the methodologies and theories of that legal tradition.⁵⁵

Clemente Ruiz Nazario was the first judge born in Puerto Rico appointed to the federal court, when President Truman nominated him and the Senate confirmed him in 1952.⁵⁶ Ruiz Nazario retired in 1966. The federal court had only one judge when they appointed Don Clemente, but the volume of cases grew substantially during his term, such that judges from other districts came to help to resolve cases, until Congress appointed a second judge in 1965.⁵⁷ The first 12 federal judges on the island were from the continental United States.⁵⁸

Another problem for Puerto Rican law is the system of appeals to the circuit court. Section 43 of the Jones Act provided that appeals from the Supreme Court of Puerto Rico would be heard by the First Circuit, instead of by the Supreme Court of the United States.⁵⁹ That changed in 1961, when the federal Congress approved a law permitting appeals to the U.S. Supreme Court in the same manner as an appeal from the highest court of any other state in the Union.⁶⁰ Given its discretion to accept or reject appeals, the U.S. Supreme Court rules upon few cases, but the circuit courts resolve many more. For this reason, during the period of transculturation the high number of appeals to the First Circuit produced even more opinions influenced by the common law.

These mechanisms could not operate in the same manner in Cuba. For that reason, in my conclusion I will put forth a theory about how transculturation could have been implemented against Cuban Law.

VII. CONCLUSION: WE ARE JUST BEGINNING

Valle, and its acceptance as precedent by both Puerto Rican U.S. federal courts, ended the more or less *official* process of transculturation of the civil law of Puerto Rico.

55. See generally TRÍAS MONGE, *supra* note 6, at ch. 6–8.

56. *Clemente Ruiz Nazario (1952-1966)*, U.S. DIST. CT. DIST. PUERTO RICO, <http://www.prd.uscourts.gov/?q=node/199> [<https://perma.cc/M4CE-H3LD>] (last visited July 28, 2017) (providing a historical note and list of federal judges in Puerto Rico from 1899 to the present).

57. *Id.* Congress authorized the second judge in 1961, but Don Clemente had to wait four additional years before the actual appointment was made.

58. *Id.*

59. Jones Act § 43.

60. PEDRO MALAVET VEGA, *EVOLUCIÓN DEL DERECHO CONSTITUCIONAL EN PUERTO RICO* 127–28 (1998). See also 28 U.S.C. § 1258 (2012).

It is true that the Treaty of Paris established a distinct legal status for Puerto Rico (total territorial cession) and for Cuba (alleged “independence” subject to United States military occupation).⁶¹ But my theory about what happened in Cuba is that the direct and indirect legal influence of the United States produced similar results of legal transculturation for the benefit of U.S. interests. I divide the years between 1898 and 1959 in the period of the so-called “Platt Amendment”—whose true author was Secretary of War Elihu Root⁶²—which is a time of direct legal interference by the United States in Cuba.⁶³ The second period began when this law was eliminated by the Cuban–American Treaty of Relations (1934), when there was *de facto* influence by the United States upon Cuban law.⁶⁴ But I want to study not only the effects of transculturation, but also its mechanisms. In Puerto Rico the judiciary continues to be appointed by Washington, which was (and is) not the case in Cuba. That brings me to some questions that I hope to answer when I am able to share more with my Cuban colleagues: How did this happen in Cuba? What effect, if any, did this have on the development of Cuban civil law in the years from 1898 to 1959? What was the Cuban reaction to these problems?

Now I hope to study Cuban law during that era of the first half of the twentieth century.⁶⁵

61. See Treaty of Paris, *supra* note 37, at arts. I, II.

62. See Act of March 2, 1901, Pub. L. No. 56-803, 31 Stat. 897–98 (1901) (providing the text as approved by the U.S. Congress). See also *Milestones: 1899-1913, The United States, Cuba, and the Platt Amendment, 1901*, U.S. DEP’T OF STATE, OFFICE OF THE HISTORIAN, <https://2001-2009.state.gov/r/pa/ho/time/ip/86557.htm> [<https://perma.cc/CW8Z-J9HT>] (giving a brief history of the same from the U.S. perspective).

63. We must be aware that this U.S. imposition was incorporated into the Constitution of the Republic of Cuba in 1901 as an “Appendix.” CONST. DE LA REPÚBLICA DE CUBA, app. arts. 3, 4, 7, 8 (1901).

64. Treaty Between the United States of America and Cuba Defining Their Relation, Cuba–U.S., May 29, 1934, 48 Stat. 1682.

65. As the tango says: *Siglo veinte cambalache/problemático y febril* [The twentieth century is a bazaar/problematic and feverish]. Enrique Santos Discépolo, *Cambalache, on EL POETA DE TANGO* (Magenta 2008) (1934) (translation by author).