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***40 JUDGING IN PUERTO RICO AND ELSEWHERE**

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Printed below is the prepared text of a lecture given by U.S. Circuit Judge José A. Cabranes of the U.S. Court of Appeals for the Second Circuit. Judge Cabranes presentation was the second in the First Circuit Forum series of lectures sponsored by the Judicial Council of the First Circuit, held at the Clemente Ruiz Nazario U.S. Courthouse, in Hato Rey, Puerto Rico, on May 23, 2001.

Muy buenas tardes, apreciados amigos y colegas. Hoy me toca hablarles en inglés, pero permítanme antes que nada ofrecerles un saludo muy cordial a todos en español. Para mi es un verdadero placer estar de nuevo en Puerto Rico, y un gran honor tener la oportunidad de dirigirme hoy a ustedes.

Chief Judge Torruella, Acting Chief Judge Pérez Giménez, members of the bench and bar of the U.S. Court of Appeals for the First Circuit and of the U.S. District Court for the District of Puerto Rico, members of the bench and bar of the courts of the Commonwealth of Puerto Rico, distinguished guests, and friends all:

Chief Judge Torruella and his colleagues in the Judicial Council of the First Circuit conceived of the First Circuit Forum as a series of lectures that would draw the general public to the federal courthouses of this circuit and engage them in dialogue with judges, academics, public officials, and other speakers. I am pleased to do my part to promote this worthy goal.

We meet just four days shy of the centenary of the U.S. Supreme Court's momentous decisions in the first seven *Insular cases* [FN1] — the cases that for 100 years have shaped Puerto Rico's constitutional and political destiny.

Speaking in Puerto Rico on a serious subject is always a tricky business — especially for anyone from outside Puerto Rico. This is so because almost any subject you touch is likely to bump into the proverbial “status question,” with all of the usual sensitivities.

Some of you may know the old joke about how people from different groups respond to a question about the same subject — for instance, an elephant. Several people are shown an elephant and asked to write something about it. The Frenchman writes a poem called “The Love Life of the Elephant.” The German writes a paper titled “A Preliminary

Investigation into the Metaphysical Implications of the Elephant.” The *Midwestern American* writes a report on “Practical Aspects of Elephant Training and Management.” And the *Jew* writes an essay titled “The Elephant and the Jewish Question.”

The Puerto Rican, of course, would write an article titled “The Elephant and the Puerto Rico Status Question.” (Twenty years ago, when then Judge Stephen Breyer was planning his first trip to Puerto Rico after going on the First Circuit, he called me for general advice, and I suggested to him that, while in Puerto Rico, he should avoid wearing garments that were red, blue, or green. I explained to Judge Breyer why, when I was about to publish my legislative history of the U.S. citizenship of the Puerto Ricans, I had asked the editors at Yale University Press to use *orange* for the cover of the book. And this will explain why I have opted for the drab color of *gray* for my tie today.) [Speaker's editorial note: In Puerto Rico, each political party has its own color for flags and other advertisements, and the use of these colors in clothing is often remarked upon, sometimes in jest: the pro-statehood New Progressive Party color is light blue; the pro-Commonwealth Popular Democratic Party color is red; and the Independence Party color is green.]

***41** As these comments suggest, on the great subject of Puerto Rico's political status, I intimate not the slightest view. Since my childhood in New York I have been intrigued by the status question. But I belatedly came to the conclusion by the mid-1970s that I, who lived in New Haven, probably lacked the standing to offer instruction to those who are *here* on how best *they* should resolve their most important political question. (This prudential rule became all the more obvious, of course, when I was appointed a federal judge 22 years ago.)

I found it difficult to say no to this invitation — extended to me several months ago — in part, because of the deep personal ties that my family has to this court. My father, Manuel Cabranes (originally of Toa Alta), and my mother, Carmen López (originally from La Playa de Humacao [Punta Santiago]), moved with their sons to New York City in the first wave of Puerto Rican migrants to the continental United States after the Second World War. Before we left Puerto Rico in 1946, our family lived in Santurce, where my mother was a teacher and school administrator and my father served as the chief probation officer of the U.S. District Court for the District of Puerto Rico.

My father was one of Puerto Rico's first professionally trained social workers, having been selected to do graduate work at Fordham in the early 1930s. Upon his return to Puerto Rico during the Great Depression he helped to found the Probation Department of the insular government. At about this time the district court's Probation Office was first organized, and my father was appointed in 1942 as the second of your chief probation officers.

My father always retained great respect and affection for the federal court of Puerto Rico and for its bar. I well recall the admiration he invariably expressed for lawyers who, in his words, “*postulan ante la corte federal.*” If he were alive today, he would be deeply gratified by the knowledge of your invitation for me to speak to you this afternoon.

Your invitation, combined with this bit of autobiography, has naturally prompted me to think about this court. And I hope you will permit me, an outsider (of sorts) but also a sympathetic student of Puerto Rico's history, to trace a bit of the story of this unusually interesting federal court, its place in the constitutional and legal firmament of Puerto Rico, and its place in the American constitutional system.

I say “in the American constitutional system” because, of course, the very existence and role of this court is predicated on the idea that Puerto Rico is indeed a part of that system.

And so we find ourselves, lo and behold, face to face with the proverbial status question. I should pause to emphasize that, in reflecting on the history of this court — especially on its historical evolution — I intend no comment on any case or cases that have ever come before the court, much less on the merits of the ubiquitous status question. That said, it seems to me that we can all agree, looking back at the history of the United States and Puerto Rico, on a number of simple propositions.

First, the growth and expansion of the United States throughout the 19th and early 20th centuries was invariably accompanied by the extension of American law and American legal institutions to the territories of the United States.

Second, to be an American colony during this period meant being governed under acts of Congress enforced by presidential appointees in the colony. A local legislature might enact most of the laws with which the average person came into contact, and local courts might apply that local law — but all of this was done pursuant to federal law and authorization. And a federal court in the territory or colony was given the principal jurisdiction over so-called federal questions — that is, cases or controversies arising under federal law.

A third uncontroversial proposition flows from the first two: From the beginning, a federal *court* existed in Puerto Rico *of necessity*. If Puerto Rico was to have *any* place within the American system of government, there would have to be a federal court here.

It was also inevitable that the federal court of Puerto Rico and its work would reflect the colonial system as it was — a system of government in which Puerto Ricans were not fully in charge in their own land.

Accordingly, from its beginnings, the federal court of Puerto Rico was enmeshed in the status question — not because its function was — or is — political, but merely because a federal court in Puerto Rico is *synonymous* with the application and enforcement of the laws of the United States and consistent with the idea that Puerto Rico is, and should be, a part of the American constitutional system in one form or another.

It is therefore entirely understandable that someone who does not believe that Puerto Rico should be a part of the American system of government — who believes Puerto Rico should be an independent nation — will not recognize the legitimacy of a federal court in Puerto Rico. It is equally clear that one cannot believe in *some* form of permanent union with the United States and reject the idea of a federal court for Puerto Rico.

Because this court's very existence is, in a sense, part of the “status question,” the court has been the object of public affection and public *dis* affection. From time to time, especially in the first half of the 20th century, the Puerto Rico Bar Association and others expressed open, if largely ritualistic, hostility to the court's very existence. [FN2] Some contemporary observers have argued that the court was a factor in the *transculturación* of Puerto Rico. [FN3] From time to time there have been suggestions that this court, alone among the federal courts of the United States, ought to conduct its affairs in Spanish. [FN4] In short, one sometimes senses that the burden of a difficult and unsettled political situation has been placed squarely on the shoulders of federal judges here.

Something roughly analogous to this is true of federal judges everywhere in the United States. Throughout the American constitutional system, federal courts have always stood in delicate equipoise between the forces of local influence and federal uniformity. Federal district judges, chosen for federal service from the ranks of lawyers in ***42** their community, are often charged with the difficult task of balancing state interests and national imperatives. In all parts of the United States, not merely Puerto Rico, this is a duty that can subject federal judges to deep resentment; during politically volatile times, it has rendered them the targets of attack from elected officials, or worse.

But a delicate balance between local concerns and national interests is precisely what American federalism is about. The achievement of such a balance looms large among the responsibilities of federal judges everywhere. Indeed, that is why we are *federal* judges, not *national* judges.

Federal judges in Puerto Rico therefore can take heart in knowing that they are not alone in performing the delicate task of negotiating local concerns and national interests. This is the very function, and the high calling, of *all* federal judges, *in Puerto Rico and elsewhere* — especially federal trial judges.

As elsewhere, the efforts of federal judges here to resolve the tension between the local and the national pose problems that are unique to the place. Critics of the federal court have characterized these efforts — that is, the application of federal law to Puerto Rico — as part of a process of *transculturación*. And so, in preparing for my remarks today, I sought to come to a better understanding of this notion of “transculturation.”

With this notion in mind — and also with the broader context of American federalism in mind — I set out to learn something about the history of this court. And I began with a hunch. My hunch — based in part on my study of the history of the United States and the history of Puerto Rico — was that transculturation might be a two-way street.

I had heard and read something about the *Americanizing* influence of the federal court in Puerto Rico, but I wondered what I might find about *Puerto Ricanizing* influences on the court and its judges, or even on the American legal system. We know that American culture deeply influences other cultures, but we know also that American culture is itself unusually receptive to the influence of others. So why should the federal court of Puerto Rico not exhibit signs of “transculturation” — in two directions?

At first, as I conducted a brief survey of the best-known literature on the history of this court, my hunch was not borne out. (Though I should emphasize that my survey was brief.) Most of what I found sounded familiar — accounts of early attempts at assimilation, with the expected reminders of Manifest Destiny and Social Darwinism, and the usual quotations of various American officials making less-than-flattering comments about the civil law and about the need to “Americanize” Puerto Rico. [\[FN5\]](#)

All of this rang true enough. It is, after all, beyond debate that the United States became a colonial power in the early 20th century with Americanizing intentions and assimilationist zeal. Even the so-called *anti-imperialists* — perhaps *especially* the anti-imperialists — held views of Anglo-Saxon superiority that have long ceased to be acceptable in polite company.

On first glance, then, it did seem that transculturation might be a one-way street — that Americans arrived here and blazed a trail of fire through Puerto Rico's legal system at the turn of the 20th century. But I forged ahead, encouraged by the sense that any thinking person who encountered an unfamiliar system of laws was bound to be intrigued by it, even if he was charged with the task of transforming it. The effort paid off. Eventually, I stumbled upon several articles in academic legal journals from the turn of the century whose authors — all of them American scholars — expressed unbounded enthusiasm for the Spanish codes of civil law that were then in force in Puerto Rico.

After dabbling briefly in the Manichaeian universe of Puerto Rico's scholarship on the clash of two legal cultures, I was interested to discover that die-hard fans of the civil law were to be found among legal scholars writing in the leading law reviews of the United States at the very beginnings of the American colonial experiment here.

One author, writing in the *Yale Law Journal* in 1907, described the Spanish *Código Civil* that was then in force in Puerto Rico as the “product of Hispanic genius.” [FN6] Another, also writing in the *Yale Law Journal*, declared that “so far as private law in civil matters is concerned, there is no better system than that represented by the Spanish codes.” [FN7] A third, in a piece for the *Harvard Law Review*, observed that this code was “written with a clearness and terseness that puts to shame *our* modern verbose statute-writing.” [FN8] In other words, even a century ago, Puerto Ricans were not alone in defending the legal system they had inherited from Spain.

The Americanizing zeal of some early colonial officials may indeed deserve historical consideration and criticism. But if one places too much emphasis on characterizing early American officials as ruthless assimilators, one risks overlooking these other Americans — unexpected admirers of the civil law.

In sum, it is not accurate, in my view, to suggest that Puerto Ricans were alone in defending the legal system inherited from Spain. The civil law system in effect in Puerto Rico at the turn of the century commanded respect and admiration in important quarters in the mainland. And it seems clear that the civil law had an impact on American legal thought. In other words, as I had hypothesized, the two legal systems influenced each other.

I found evidence of these crosscurrents in the work of one of the Americans who served as a district judge early in the 20th century — Peter J. Hamilton, the sixth judge to serve on this court, who was appointed to the bench by President Woodrow Wilson in 1913. One leading commentator on the topic of transculturation describes Judge Hamilton as a “loud proponent of assimilation,” and quotes him as saying that “the public schools and the federal court are the two educational forces for Americanization on the island.” [FN9]

It is no doubt true that Hamilton saw Americanization as a desirable goal. In this respect he would have shared the views of most American leaders of his time. Americans then generally promoted Americanization as the core principle of immigration policy. And in Puerto Rico the goal of *43 American policy was indeed Americanization. This was precisely the program promised by Gen. Nelson A. Miles upon his landing at Guánica in 1898, where he pledged to bring to the people of Puerto Rico what he grandiosely called “the blessings of the liberal institutions of [America's] government.” [FN10]

Yet it turns out that Judge Peter Hamilton also wrote a book that explored the relationship between the civil and

common law. [FN11] The book — a serious, respectful, and scholarly endeavor — was published in San Juan in 1922. Among other things, it suggests that Judge Hamilton was not merely a parochial drummer for all things American. Instead, Hamilton evinced a genuine and sophisticated interest in Puerto Rico and its legal system, and he was well-informed about both.

The same Judge Hamilton — who, by the way, taught constitutional law at the University of Puerto Rico [FN12] — also expressed his *own* reservations about the imposition of one legal system upon another. Speaking at the ceremony inaugurating the federal building in San Juan on Nov. 4, 1914 — the building Judge Torruella helped to save and which has recently been beautifully restored — Judge Hamilton made the following observation: “It has been truly said that no law can be imposed upon another country. If it is to endure it must grow out of the needs of that country, or must be so modified as to meet the needs of that country.” [FN13] Perhaps, then, Judge Hamilton's experience as a federal district judge on this court transformed *him* quite as much as he transformed the world around him.

Thus emboldened in my quest to find the ways in which transculturation might be a two-way street, I set about trying to get a more concrete sense of the extent of Puerto Rican participation in the proceedings of the early federal court. My highly unscientific study consisted primarily of perusing several of the journals of this court, maintained by the National Archives and made available to me for study. These old and bulky journals — roughly 4 feet long by 2 feet wide and a foot thick — were shipped to the archives from Puerto Rico decades ago. They contain a day-to-day manuscript record of the district court's proceedings from the first days of its existence.

The first journal, covering the first three years of the court, reports that the court convened for its first regular session on Oct. 8, 1900, with William H. Holt presiding. [FN14] Several judges had served on the provisional federal court that was established under the military government of Puerto Rico, but Holt was the first federal district judge under the Foraker Act of 1900, [FN15] which established the first civil government in Puerto Rico under the American flag. [FN16]

It is always a risk to make assumptions about a person's place of origin based on a name, and this is no less true in Puerto Rico, where a Rodríguez, an O'Neill, a Denton, and an Antonetti have roughly equal chances of belonging to families that have been in Puerto Rico for generations. But to the extent that one can make an educated guess on the basis of a name, the journal of this court in its very first years is revealing.

It does not come as a shock that an English-speaking court in a new, Spanish-speaking colony would be run largely by persons from the mainland, or that the body of decision-makers, including jurors, would consist substantially of mainlanders. What *is* surprising is the significant *Puerto Rican* presence on both grand and petit juries from the earliest days of the court.

During its first regular session (on Oct. 8, 1900), the court impaneled its first grand and petit juries. The names on the first grand jury ever to be summoned in Puerto Rico included names such as Ángel Fernández, Juan Seix Rosaly, Manuel A. Toro, and J. Ramón Laubriel. These and other individuals with Spanish names represented about half of those called upon to serve that day. Some of them were dismissed for good cause and replaced. When all was said and done, the court had added Juan José Baer, Francisco Marxuach, and José Denton to the list of grand jurors.

Meanwhile, the first petit jury to serve in this court — and thus, presumably, the very first petit jury in *all* of Puerto Rico — also counted with a large Puerto Rican contingent, as far as one may judge from the court's journal. Again, the Spanish names on that list accounted for about half of those called for duty. [FN17] (Among the names that caught my eye was that of Juan Torruella Cortada, who is listed among the persons called for jury duty in December of 1909, and who the chief judge has assured me is one of his *antepasados*.) [FN18]

As one turns the large, dusty, and heavy pages of the journal of the court, several familiar names make appearances on the lists of jurors. These include, notably, one listed as “Dr. José Barbosa,” who on April 8, 1901, qualified for jury service but “who for good reasons [was] excused by the court.” [FN19] Dr. José Celso Barbosa was, of course, a leading figure in the newly created insular government, and the founder of Puerto Rico's statehood movement.

Several months later, on Oct. 14, 1901, the name of Tulio Larrínaga turns up on the jury list. [FN20] Larrínaga would in due course come to hold the island's highest elected position at the time, that of resident commissioner in Washington.

It would take a more extensive study than my own brief survey to say for certain how many of these jurors were natives of the island and how many were recently arrived Americans. Nevertheless, it seems evident that the federal court from its beginnings relied equally on locals and outsiders to perform the duties of jurors.

A caveat: these jurors, of course, had to know English. Indeed, on May 6, 1901, according to the records maintained by the clerk (whose name, by the way, was Ricardo Nadal), [FN21] a new panel of potential petit jurors was presented to the court that included one W. H. Holt *Jr.* — presumably the son of Judge Holt. [FN22] This suggests that perhaps there was a certain difficulty in finding English-speaking jurors.

Although Puerto Ricans were a significant presence among juries from the first day that the court was in operation, an identifiably Puerto Rican name does not, *at first*, *44 appear among the lawyers mentioned in the court's journal. The first group of lawyers to practice before the U.S. District Court for the District of Puerto Rico shared the common characteristic of Anglo-Saxon names — whatever that tells us about their place of origin. [FN23] Yet only one month after the court's first session, numerous Spanish-surnamed attorneys begin to be admitted to the federal bar.

The court journal for Nov. 19, 1900, contains an entry recording the admission to practice before the federal court of no less a figure than Federico Degetau y González. Degetau was elected that same November to serve as Puerto Rico's *first* resident commissioner. Thus it appears that Federico Degetau was the first Puerto Rican to be admitted to the federal bar [FN24] — making it all the more appropriate that his name adorns the federal building nearby, here in Hato Rey.

In June 1903, the record reflects the admission to the federal bar of one J. Henri Brown. Brown's name, like others on our list, would fall through the cracks if we were engaged *solely* in a search for Spanish names. Indeed, what I am told is the improbable pronunciation of his first name — Henri, spelled H-e-n-r-i — seems almost designed to frustrate any attempt to pigeonhole him into any group. But no matter. What matters for our purposes is that in 1910, J. Henri Brown would found the law firm that would later be known as Brown Newsom & Córdova. [FN25] As you all know, in 1993 that firm — which at the time was the oldest law firm in Puerto Rico — would join what then became the firm

of Goldman Antonetti & Córdova.

Other notable Puerto Ricans practicing before the federal court in its early years include Roberto H. Todd, Martín Travieso Jr., Juan B. Huyke, Cayetano Coll y Cuchí, and one Jacinto Texidor, presumably Jacinto Texidor y Alcalá del Olmo, who would later be appointed by President Coolidge as a justice of the Supreme Court of Puerto Rico. [FN26]

Lest one be seduced by *too* rosy a picture of the early days of the American presence in Puerto Rico, it should be noted that in at least one aspect of the court's operations, the absence of Puerto Ricans leaps from the pages. I speak of naturalization.

Judge Holt presided over numerous naturalization applications. As we all know, it was *not* Puerto Ricans who were being granted U.S. citizenship in these years by Puerto Rico's federal court — although I did notice that applicants consistently reported having resided within the United States for more than five years *and* within Puerto Rico for more than one year, which suggests that residence within Puerto Rico was accorded some legal significance for purposes of naturalization on the island. Of these petitions for naturalization, two are particularly worthy of note.

On Oct. 21, 1902, one Arturo Méndez appeared before the court presenting his petition for naturalization as a citizen of the United States. [FN27] Méndez was a native of Cuba residing in Puerto Rico; therefore, his petition for naturalization raised the question of whether he was the subject of a foreign sovereign for purposes of naturalization.

The court recognized the difficult and interesting question before it. It filed an order noting that Méndez had resided in New York from 1886 to 1897, and in Puerto Rico since 1897. The court also noted that Méndez “took the preliminary oath of allegiance to the United States on Dec. 14, 1899.” It reasoned that Méndez was “Spanish until Spain relinquished her sovereignty over the Island of Cuba”; that by virtue of the Treaty of Paris “he became a Cuban subject”; and that, as a result, Méndez was “never a Porto Rican.” Therefore, it concluded, Méndez was “entitled to be naturalized as an alien or subject of the Cuban Republic” as long as he complied with the United States laws relating to naturalization. [FN28]

On reading this passage in the journal, I experienced a version of the mixed reaction that I have come to associate with anything that touches on the so-called status question. On the one hand, I was excited to encounter an unusual and fascinating legal question. Here was a native of Cuba, resident in New York for more than the five years required to become a citizen, but resident in Puerto Rico at the time of the change in sovereignty in 1898. Was Méndez an “alien” and thus eligible to become a citizen of the United States? Or was he, like the Puerto Ricans, a mere “subject” of the United States?

At the same time, I also experienced a familiar sinking feeling as I read the court's order and realized that here, as in so many other settings, the fact of being formally characterized as Puerto Rican would have worked *against* Méndez. Méndez became a citizen of the United States because, as the court put it, he was “never a Porto Rican.”

But with another petition for naturalization, I found that, once again, I was in for a bit of a surprise. On June 22, 1903, the court received a naturalization application from one José Lorenzo Casaldue y Goicochea. Prior to that day, the court had routinely granted such petitions, as long as the applicants had complied with naturalization requirements.

The only such petition that had given the court any pause was that of our Cuban friend, Arturo Méndez. But the petition by José Lorenzo Casalduc — a native of Puerto Rico — seemed to take the court by surprise. Upon receiving it, the court took the petition under advisement, stating only that it would “take [] its time upon the matter.” [FN29]

The court did indeed take its time. Nearly one year later, the court finally issued its order. [FN30] In its decision of March 5, 1904, the court noted, first, that Casalduc was a native of Puerto Rico and that he had taken the preliminary oath in the city of Philadelphia in 1897. It explained that Casalduc had lived in the United States between 1895 and 1899, and that, in 1899, he had returned to Puerto Rico. The court then observed that “[t]his court has no power to naturalize a citizen of Porto Rico. They are not aliens or foreigners to the United States.” [FN31]

Although it did not expressly cite the U.S. Supreme Court's decision in *Gonzales v. Williams*, [FN32] which had been handed down just two months earlier, it is evident that the court had that case in mind. For it was *Gonzales v. Williams* that held that natives of Puerto Rico, though *45 they were not citizens of the United States, were not aliens or subjects of a foreign sovereign either, and could therefore travel freely between Puerto Rico and the mainland.

But in the matter of José Lorenzo Casalduc, the district court did not stop here. Turning its attention to the Foraker Act of 1900, the court explained that the act had given the status of “citizens of Porto Rico” to all inhabitants of Puerto Rico who were Spanish subjects *and who were residing in Puerto Rico* on April 11, 1899, the date of ratification of the Treaty of Paris. [FN33] José Lorenzo Casalduc, noted the court, had *not* been living in Puerto Rico on April 11, 1899. Therefore, he was not a “citizen of Porto Rico” within the contemplation of the Foraker Act; and precisely because he was *not* a “citizen of Porto Rico,” he was entitled to apply for naturalization.

Casalduc immediately — on that very day — proceeded to do just that. He thus became, as far as I can tell from court records, the first native of Puerto Rico residing on the island to become a citizen of the United States — 14 years before the Jones Act in 1917 collectively naturalized the people of Puerto Rico. [FN34]

This court did not address the question of Casalduc's personal status *between* the enactment of the Foraker Act of 1900 and his naturalization as a U.S. citizen in 1904. The court's reasoning suggests, however, that Casalduc's situation was even more bizarre than that of other Puerto Ricans of the period — that is, for about four years Casalduc apparently was *not* an alien in the United States; he was *not* the subject of a foreign sovereign; he was *not* a citizen of the United States; and he was *not even* a “citizen of Porto Rico” under the curious and controversial provision of the Foraker Act that created this category. It thus appears that for a time José Lorenzo Casalduc — and any native of Puerto Rico *absent* from the island in 1899 — was in a kind of legal limbo.

Whether any others became U.S. citizens in this manner I do not know. In any event, with Casalduc's naturalization, this court managed to *include* at least one Puerto Rican in a process from which all native Puerto Ricans were supposed to be excluded.

Needless to say, Puerto Ricans continued to be excluded from the American system in many ways, as they are still. But this court is a fruitful source of examples of the ways in which greater inclusion has been achieved over time.

Between 1900 and 1915, appeals from orders of the U.S. District Court for the District of Puerto Rico were few

and far between — and then, only to the U.S. Supreme Court. But in 1915, this court was included in the First Circuit. [FN35]

There are many anecdotal explanations given by Puerto Rican lawyers for the anomalous presence of Puerto Rico in the First Circuit — not in what is now the Eleventh Circuit, which is closer, or in the Second, where so much else that is Puerto Rican can be found. But the legislative history of the statute that placed Puerto Rico in the First Circuit suggests that the First Circuit was chosen for quite mundane reasons — primarily because (in the words of the House and Senate reports) there was “less business pending there than in any other circuit court of appeals.” [FN36] The Second Circuit, on which I currently sit, was also considered (along with the Third Circuit), but we were ruled out because we were “overburdened.” [FN37] (In the Second Circuit, it took us a while, it seems, to establish the same reputation as the First Circuit for being on top of our game.)

Another historic instance of inclusion came in 1952, the same year that Puerto Rico adopted its Constitution. That year saw the appointment for the first time of a native son, Clemente Ruiz Nazario, as a district judge. He is, of course, the judge for whom this courthouse is named.

Ruiz Nazario's nomination enjoyed that rarest of privileges: *unanimous* support from Puerto Ricans of all political persuasions. According to the representations of his supporters in the Congressional Record of his appointment and confirmation, he was backed by all local political parties, as well as by the Democratic and Republican parties of Puerto Rico (such as they were); by the Puerto Rico Bar Association; and by the Puerto Rican delegation to the American Bar Association.

What's more, Ruiz Nazario didn't have to worry about obtaining the currently celebrated “blue slip” or about obtaining the *unanimous* support of Puerto Rico's Senate delegation, since Puerto Rico's congressional delegation consisted then, as it does today, of only *one* person, and that one person was not in the Senate. The legislative history reflects, of course, that Resident Commissioner Antonio Fernós Isern — an ally and political representative of the commonwealth government of Luis Muñoz Marín — was among those strongly supporting Ruiz Nazario. [FN38]

In 1952, Puerto Rico's electorate voted overwhelmingly to affirm its desire for some form of permanent union with the United States. The people of Puerto Rico would continue to do so, in increasing numbers, for the next five decades. These and other events in 1952 bestowed a certain legitimacy on Puerto Rico's place in the American constitutional system. The appointment of a Puerto Rican judge to the federal district court that would operate within this system of government, and the widespread support he enjoyed, reinforced and enhanced the legitimacy of Puerto Rico's federal court.

Other developments during the past half-century similarly contributed to the transformation and legitimation of the court and its place in the scheme of things. Among these was the 1966 grant of life tenure to judges serving on this court. [FN39] The first Article III judge to sit on this court was a Puerto Rican, of course — namely, Judge Hiram R. Cancio, previously the secretary of justice under Gov. Luis Muñoz Marín.

In some sense, *all* of the developments I have described are part of a process of Americanization, effected in part through the presence of the federal court in Puerto Rico.

It is perhaps worth repeating the simple political axiom to which I referred earlier: a political connection to the United States requires the application of American law, and the application of American law requires a U.S. district court.

***46** If the history of this court is a history of Americanization — and it is — it is not *merely* a history of Americanization. It is also a history of *Puerto Ricanization* — the Puerto Ricanization of federal law here, effected through the participation of Puerto Ricans in all aspects of the application and enforcement of federal law in the federal court of Puerto Rico.

So it is that, since the beginning of the past century, this court — this thoroughly American court, now established under Article III of the U.S. Constitution — has become a thoroughly Puerto Rican court.

This is transculturation indeed.

[FN1]. *José A. Cabranes was appointed to the U.S. Court of Appeals for the Second Circuit in 1994. He was appointed to the U.S. District Court for the District of Connecticut in 1979, where he served two years as chief judge. Judge Cabranes was the first Puerto Rican named to the federal bench in the continental United States. He writes: “I owe a debt of gratitude to my law clerk, Christina Duffy Burnett (née Duffy Ponsa), a native of Puerto Rico, for her characteristically meticulous and enthusiastic editorial assistance.”*

[FN1]. *See De Lima v. Bidwell*, 182 U.S. 1 (1901); *Goetze v. United States*, 182 U.S. 221 (1901); *Crossman v. United States*, 182 U.S. 221 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); *Huus v. New York and Porto Rico Steamship Co.*, 182 U.S. 392 (1901). The decisions in these cases were handed down on May 27, 1901.

[FN2]. *See, e.g., Carmelo Delgado Cintrón, El Tribunal Federal como factor de transculturación en Puerto Rico*, 34 REV. COL. ABOG. P.R. 5 (1973) at 34 (describing repeated efforts since 1909 by leaders of Puerto Rico's bar and some of the island's political leaders to limit or eliminate the jurisdiction of the federal court on the island); *see also, e.g., A Civil Government for Porto Rico: Hearings on H.R. 8501 Before the House Comm. on Insular Affairs*, 64th Cong., 1st Sess. (1916), at 82 (statement of Manuel Rodríguez Serra, representative of the Bar Association of Puerto Rico and the Puerto Rico section of the Latin American Association). One of the members of the Puerto Rico bar who, according to Delgado Cintrón, sought the limitation or “suppression” of the federal court's jurisdiction (in 1910) was Jacinto Texidor y Alcalá. *See Delgado Cintrón, id.* In 1902 Texidor wrote a series of articles criticizing the penal code that was implemented under U.S. rule. *See Luis González Vales, Apuntes para una historia del proceso de adopción del código penal luego del cambio de soberanía*, 1 REV. ACAD. PUERT. JURISP. Y LEGIS. 141 (1989) at 163-65. In November 1902, Texidor was admitted to the federal bar. *See National Archives and Records Administration, Northeast Region, U.S. District Court for the District of Puerto Rico, Journal No. 1 (1900-1903) (Journal (1))*, at 431. He would become a justice of the Puerto Rico Supreme Court in 1928. *See Judges of the United States*, 2d ed. (Washington, DC: GPO, 1983) at 486; *see also infra*, note 26 and accompanying text.

[FN3]. *See Delgado Cintrón, supra*, note 2; *see also Liana Fiol Matta, El control del texto: Método Jurídico y*

Transculturación, 68 REV. JUR. U.P.R. 803 (1999); Liana Fiol Matta, *Civil Law and Common Law in the Legal Method of Puerto Rico: Anomalies and Contradictions in Legal Discourse*, 24 CAPITAL UNIV. L. REV. 153 (1995); Michel J. Godreau & Juan A. Giusti, *Las concesiones de la corona y propiedad de la tierra en Puerto Rico, siglos XVI-XX: Un estudio jurídico*, 62 REV. JUR. U.P.R. 351 (1993) at 579 n.96 (explaining the origins and uses of the term *transculturación* and its “baggage” (*bagage*)); Richard Graffam, *The Federal Courts' Interpretation of Puerto Rican Law: Whose Law Is It, Anyway?*, 47 REV. COL. ABOG. P.R. 111 (1986).

[FN4]. See, e.g., José Julián Álvarez González, *Law, Language, and Statehood: The Role of English in the Great State of Puerto Rico*, 17 LAW & INEQ. 359, 373 (1999); Luis Muñiz Argüelles, *The Status of Languages in Puerto Rico*, in Carmelo Delgado Cintrón, *El debate legislativo sobre las leyes del idioma en Puerto Rico*, (1994) at 69-82 (quoted in Álvarez González, *id.*).

[FN5]. See, e.g., Delgado Cintrón, *supra*, note 2; González Vales, *supra*, note 2; Fiol Matta, *supra*, note 3; Graffam, *supra*, note 3; see also José Trias Monge, *El choque de dos culturas jurídicas en Puerto Rico: El caso de la responsabilidad civil extracontractual* (Orford, NH: Equity Publishing House, 1991).

[FN6]. Charles Sumner Lobingier, *A Spanish Object-Lesson in Code-Making*, 16 YALE L. J. (1907) at 411. Lobingier was at the time a U.S. judge of the Court of First Instance in the Philippines. See *id.* at 416.

[FN7]. William W. Howe, *The Law of Our New Possessions*, 9 YALE L. J. 379 (1900) at 386. Howe, like the next commentator, did suggest changes to the penal code. In this regard, it might be noted that Puerto Rico's secretary of justice under the U.S. military government, the Puerto Rican Herminio Díaz Navarro, also recommended changes to the penal code at the time — including, according to González Vales, the introduction of trial by jury. See González Vales, *supra*, note 2, at 150. Díaz Navarro's recommendations — which he offered on behalf of nearly all judges and lawyers in Puerto Rico, see Rubén Nazario Velasco, *El '98 y la invención de la tradición legal puertorriquena*, 67 REV. JUR. U.P.R. 1041, 1077 (1998) n.14 — appeared in an appendix to the *Carroll Report*, a report prepared by Henry K. Carroll, who was designated “special commissioner” by President McKinley and sent to Puerto Rico to prepare a report on the island following the transfer of sovereignty from Spain. See González Vales, *id.* at 148-51 (discussing Henry K. Carroll, *Report on the Island of Porto Rico, Its Population, Civil Government, Commerce, Industries, Production, Roads, Tariffs, and Currency with Recommendations* (Washington, D.C.: GPO, 1899)).

[FN8]. Lloyd McKim Garrison, *The Penal Code of Cuba and Porto Rico*, 13 HARV. L. REV. 124 (1899) at 129 (emphasis added).

[FN9]. Quoted in Graffam, *supra*, note 3, at 113 n.4.

[FN10]. Quoted in Raymond Carr, *Puerto Rico: A Colonial Experiment* (New York, NY: Twentieth Century Fund and Vintage Books, 1984), at 31.

[FN11]. See Peter J. Hamilton, *The Origin and Growth of the Common Law in England and America: A Study of Private Law, Comparing the Evolution of the Common Law and the Civil Law* (San Juan, PR: Caribbean Publishing Co., 1922).

[FN12]. *See id.* at title page.

[FN13]. Peter J. Hamilton, *The Federal Court of Porto Rico*, Remarks on First Sitting of the Court in the Federal Building at San Juan, Nov. 14, 1914, at 8. According to the Public Affairs Office for the First Circuit, this building housed the district court, bankruptcy court, and post office (and, beginning in 1984, Judge Torruella's chambers), until December 1990, at which time the General Services Administration began renovations. During that period, the district judges who had continued to sit in the San Juan courthouse and Judge Torruella moved to the Clemente Ruiz Nazario U.S. Courthouse in Hato Rey. In the year 2000, the courthouse in San Juan was reopened and named for the late José V. Toledo, a former chief judge of the United States District Court for the District of Puerto Rico.

[FN14]. *See* Journal (1), *supra*, note 2, at 2. This first session began in the presence of Governor Charles H. Allen; W. H. Hunt, secretary of the Executive Council of the new insular government; M.S. Brumbaugh, commissioner of education; and J.A. Russell, attorney general, along with other dignitaries. *See id.*; *see also* An Act Temporarily to provide revenues and a civil government for Porto Rico and for other purposes (the Foraker Act), § 18, 31 Stat. 77, 81 (1900) (providing for an Executive Council including a secretary, an attorney general, a treasurer, an auditor, a commissioner of the interior, and a commissioner of education), *codified as amended at* 48 U.S.C. §§ 731 *et seq.* During the court's first regular session, the following took the oath of office: William H. Holt as district judge; Edward S. Wilson as marshall of the District of Puerto Rico; and N.B.K. Pettingill as U.S. “district attorney” for Puerto Rico. *See* Journal (1), *id.*

[FN15]. *See* Foraker Act, *id.*

[FN16]. The Foraker Act first organized a “district court of the United States for the District of Porto Rico” and authorized one district judge for the court to be appointed by the President, with the advice and consent of the Senate. *See* § 34, *id.* at 84. That court operated with a single judge until 1961, when Congress authorized a second judge. *See* Act of May 19, 1961, Pub. L. No. 87-36, § 2(a), (d), 75 Stat. 80, 81, 82. Congress authorized a third judgeship in 1970, *see* Act of June 2, 1970, Pub. L. No. 91-272, § 1(a), (d), 84 Stat. 294, 296, and four more in 1978, for the current total of seven, *see* Act of Oct. 20, 1978, Pub. L. No. 95-486, § 1(a), (c), 92 Stat. 1629, 1630, 1631.

[FN17]. *See* Journal (1), *supra*, note 2, at 5-6. The names on this list included José Guenard, Is[i]doro Delgado, one Dr. Bonillas y Cuebas, M. Fernández y Nater, Rafael Yvarte, and M. Badreña.

[FN18]. National Archives and Records Administration, Northeast Region, U.S. District Court for the District of Puerto Rico, Journal No. 5 (1908-1910), at 512.

[FN19]. Journal (1), *supra*, note 2, at 70.

[FN20]. *See id.* at 131.

[FN21]. *See id.* at 66-67.

[FN22]. See National Archives and Records Administration, Northeast Region, U.S. District Court for the District of Puerto Rico, Journal No. 2 (1903-1905) (Journal (2)), at 118.

[FN23]. See Journal (1), *supra*, note 2, at 5.

[FN24]. See *id.* at 34.

[FN25]. See “A Brief History of Goldman Antonetti & Córdova,” at www.gaclaw.com/history.htm (accessed on May 18, 2001).

[FN26]. Texidor was nominated to the Puerto Rico Supreme Court in 1928 by President Coolidge. See *Judges of the United States*, *supra*, note 2. According to the biographical data on Texidor in *Judges of the United States*, Texidor published in 1924 a work titled *Civil Rights in Puerto Rico*.

[FN27]. See Journal (1), *supra*, note 2, at 365.

[FN28]. *Id.*

[FN29]. *Id.* at 571.

[FN30]. See Journal (2), *supra*, note 22, at 110.

[FN31]. *Id.*

[FN32]. 192 U.S. 1 (1904).

[FN33]. See Journal (2), *supra*, note 22, at 110; see also Foraker Act, *supra* note 14, § 7, 31 Stat. at 79.

[FN34]. See Journal (2), *id.*; see generally José A. Cabranes, *Citizenship and the American Empire: Notes on the Legislative History of the United States Citizenship of Puerto Ricans* (New Haven, CT: Yale University Press, 1979).

[FN35]. See Act of Jan. 28, 1915, Pub. L. No. 63-241, ch. 22, 38 Stat. 803, 803-04, *codified as amended at* 28 U.S.C. § 1291 (1982).

[FN36]. Amendment to Judicial Code to Include Porto Rico in First Circuit, House Report [To Accompany H.R. 19076], 63 Cong., 2d Sess. (Oct. 8, 1914) (House Report on H.R. 19076), at 1; *Amendments to the Judicial Code, Senate Report [To Accompany H.R. 19076]*, 63d Cong., 2d Sess. (Dec. 21, 1914) (Senate Report on H.R. 19076), at 1. These reports also state that “there are established lines of communication between Porto Rico and our North Atlantic seaports.” See *id.* However, as is clear from the Senate debate on the matter, it was not disputed that there were *better*

lines of communication between Puerto Rico and New York. *See* 52 CONG. REC. 1545, 63d Cong., 3d sess. (Jan. 14, 1915). Rather, the fact that lines of communication *also* existed between Boston and Puerto Rico further supported the choice of the First Circuit. As explained by Sen. Chilton, “it was thought [by the committee] that Boston, where the court is held, comes within the line of travel as nearly as any place would, and that docket was not crowded with business, and that court would probably take care of the business more expeditiously than any other court of appeals.” *See id.*

[FN37]. *Id.*

[FN38]. *See* 98 CONG. REC. A2295 (Apr. 10, 1952).

[FN39]. Report to accompany H.R. 3999, 89th Congress, 1st Sess. (1966) (discussing P.L. 89-571, 80 Stat. 764 (Sept. 13, 1966)).

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