

Our Supreme Court

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The Historical Foundation of the Supreme Court of Puerto Rico has just published a book titled *La Justicia en sus Manos* on the history of our Supreme Court. This is a fine publication authored by Luis Rafael Rivera and published by Ediciones Santillana Inc. The foundation operates as a nonprofit trust and is autonomous and independent of the Supreme Court.

During the first three centuries and three decades after the discovery and colonization of Puerto Rico by Spain, justice in Puerto Rico was administered at the local level with appeals going to Santo Domingo or Cuba. Our first court of appeals, which the author identifies as the predecessor of our Supreme Court, was established by Isabel II, Queen of Spain, in 1832. This was the *Real Audiencia Territorial*, which thereafter heard all civil and criminal appeals coming from the local courts in Puerto Rico. There was recourse in matters of law to the Supreme Court in Madrid from the *Real Audiencia*.

The establishment of the *Real Audiencia* was widely celebrated in Puerto Rico because it was an institution that the island had long been seeking from Spain. The *Audiencia* was first housed very close to La Fortaleza in the building the Commonwealth State Department occupied from 1952 to 1984. The State Department was moved to Plaza de Armas under the Romero Barceló administration. The building where the *Audiencia* was located was restored under my administration in 1992. Two floors that had been added on to the original building for the facilities of the State Department were demolished and the building was restored to its original character when the *Audiencia* was located there. I dedicated the restored building to Fernando Chardón, who had been secretary of State during the Ferré administration.

The *Audiencia* remained in this building until 1867 when it was moved to the second floor of the Dominican Convent. The Dominican Convent is the large, two-story building facing the Atlantic Ocean next to the Plaza del Quinto Centenario in the Ballajá ward of historic Old San Juan. It remained there until 1933 when it was moved to the then newly constructed Capitol of Puerto Rico. The U.S. Supreme Court was once similarly housed in the U.S. Capitol.

When Puerto Rico was governed by the War Department of the United States, the *Real Audiencia* continued to exercise its judicial power until Aug. 7, 1899, when it was baptized by General Orders 114 and 118 of Brig. Gen. Davis as the Supreme Court of Puerto Rico. It was during this period that it was a Court of last resort in all matters. This changed after the Foraker Act went into effect in 1900. Appeals from our Supreme Court would go to the Supreme Court of the United States.

Under the Foraker Act, the Supreme Court was composed of five judges appointed by the president of the United States. Three justices from the *Real Audiencia* were carried over to the Supreme Court: José S.

Quiñones, the chief justice, José María Figueroa and José C. Hernández. The president then established the practice of appointing two North Americans to the court. Luvis Sulzbacher and James Harvey McLeary were the first two appointed.

This arrangement created a conflict between the civil law, which applied in Puerto Rico and the common law under which the stateside justices had been trained. This conflict was similar in nature to the conflict created at the time in our educational system by introducing English as the language of instruction. The stateside justices were called upon to apply the laws of Puerto Rico, which were civil in nature but their training led them to decide cases by referring to judicial precedents decided by judges in the States of the union. That is, to apply the common law. The integrity of our legal system was compromised.

The case law decided by our Supreme Court during the first half of the 20th century was seriously affected by the clash of the legal orders of the civil and common law. The Jones Act, which substituted the Foraker Act in 1917, only made matters worse because it directed appeals from our Supreme Court not to the Supreme Court of the United States but to the Court of Appeals of the First Circuit in Boston.

When Puerto Rico became a Commonwealth in 1952, we acquired the power to appoint all the judges in our judicial system, including those of our Supreme Court. Article V of the Constitution vests the judicial power “in a Supreme Court and in such other courts as may be established by law.” “The Supreme Court,” states the Constitution, “shall be the court of last resort in Puerto Rico.” It is the court of last resort for matters under Puerto Rican law or under the Commonwealth Constitution. Matters under federal laws or under the U.S. Constitution can be appealed to the U.S. Supreme Court. Under our Constitution, the court acquired the power to adopt rules for the administration of the judicial system and the power to administer the courts was entrusted to the chief of Justice. Shortly after the Commonwealth was established, the court was moved to its present location adjoining Muñoz Rivera Park.

The evolution of our Supreme Court from the times of the *Real Audiencia Territorial* to the present court reflects the ups and downs of self-government in Puerto Rico from Spanish times to the establishment of Commonwealth. With Commonwealth, the court comes into its own. The judicial power on the island is enshrined in a constitution adopted by the people of Puerto Rico. The court is entrusted with the power to interpret and apply this constitution, a task that makes it responsible for adapting its provisions to the changing circumstances of our lives as time goes by.

The impact of the court after Commonwealth is clearly discernible through its decisions. Under the presidency of Luis Negrón Fernández, it decided the landmark case of *Ocasio v. Díaz*, wiping out the stigma of illegitimate birth from our legal order, and *Pueblo v. Tribunal*, establishing Spanish as the official language of our judicial system. The Trías Court made a conscious effort to restore the primacy of the civil law, instituted divorce by consent in Puerto Rico through an interpretation of our Constitution, ruled that none of the above must be on the ballot in any referendum and ruled on the use of public funds on matters affecting status and in favor of the election of Carlos Romero Barceló as governor of Puerto Rico in 1980. The Pons Court outlawed indiscriminate surveillance for ideological reasons—*carpeteo*. The

Andreu Court faced up successfully to a court-packing proposal from the executive and found unconstitutional the use of public funds for propaganda during elections. The court, presided by Federico Hernández Denton, ruled on the "pivazos" or the adjudication of ballots that decided the 2004 elections and promptly settled the controversy over the sales tax, which would have seriously damaged the credit of the Commonwealth.

At present, our Supreme Court is the keystone for the workings of democratic government and the respect of civil liberties in Puerto Rico. As Chief Justice Hernández Denton says, the court's history is the history of its work, its contributions, its wise abstentions and its initiatives when Puerto Rico has needed a branch of government to face up to our present problems.

