LEGISLATIVE AND JUDICIAL REORGANIZATION IN PUERTO RICO.

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LEGISLATIVE AND JUDICIAL REORGANIZATION
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INTRODUCTION

Ever since the rise of the social-philosophical schools, an ever-increasing belief in what Ward called "the efficacy of effort" has entered legal thought. Law and legal institutions are no longer conceived as wholly developed "by internal silently-operating powers" which leave no place for conscious change. The sociological and realist schools, heirs to part of the social-philosophical tradition, have emphasized in American thought the fact that legal institutions can and should be reshaped by intelligent human effort. Legal institutions are not to be allowed, as the historical school maintained, to develop by themselves, in a gradual unfolding of a metaphysical Idea. Legal institutions are to be constantly reexamined to determine whether they serve the end for which they exist. In realist-sociological thinking, such an end is the promotion of community values, the satisfaction of human claims with the least possible friction and waste.

The attention given to the question of the end of law has centered the chief problems of legal theory in problems of the operation, rather than of the nature, of law. Rather than to determine the abstract content of rules and their logical interrelation with other rules, the concern of jurists has come to be the determination of whether given rules and doctrines work well, i.e., whether they efficiently serve what are conceived to be the ends of law. The absolute necessity of classifying our policy goals must therefore be clearly recognized.

Together with "the efficacy of effort", and the need to concretize that vague notion into specific policy goals, current legal thinking has emphasized the importance of attending also to the means of attaining specific policy goals. Granted that we have a clear picture of the values to be promoted in a community, which are to be the means of promoting

those values? For this task, a thorough examination of institutional structures, governmental and otherwise, and of institution-ways and group symbols is of the utmost importance. It shall be our purpose here to focus attention on just one aspect of this problem: the determination of how far can the organization of our courts and our legislature be improved upon in order to make them more efficient tools for the task of promoting democratic values.

Vast and complex are the problems of our community. In a small island of 3,423 square miles, a population of slightly over two million, which will reach three million by 1965, are fighting for their lives. Principally an agricultural community, the yearly family income of wage earners and small farmers is around $200 and $400 respectively; the per capita income of the former group is below fifty dollars a year. Limited natural resources, a very low degree of industrialization, and inadequate


educational facilities further aggravate the situation. In such a context, the usual need for carrying out the tasks of government with the utmost economy and efficiency is felt even more deeply. The conviction also grows on us, against this background of poverty, that on governmental efforts and planning rests a major share of the job of bettering our future.

No thorough testing and reshaping of governmental institutions to make them better tools of social reform have, however, been attempted in Puerto Rico, except in the last few years. The major efforts at governmental reorganization have so far been limited to the executive branch. The changes carried out in this branch, have been of quite a fundamental nature. A Planning Board was created in 1942, which is doing work of the utmost importance through carefully prepared Six-Year Plans. A Bureau of the Budget, attached to the Office of the Governor was also created.

5. For an illuminating account of these changes, see Tugwell, R. G.: The Stricken Land, Doubleday & Co., 1947.

in 1942. The same year saw the creation of a number of government corporations: The Transportation Authority, 8 the Communications Authority, 9 the Development Bank, 10 and the Industrial Development Company. 11 Other extremely important government agencies that have been recently established are the Land Authority, 12 the Water Resources Authority, 13 the Aqueduct and Sewerage Service, 14 and the Agricultural Company. 15 Other old agencies have been thoroughly reorganized. 16 A vast program of social and economic reform is being carried out by these agencies. The first

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7. Title II, Laws 1942.
10. Act #252, Laws 1942.
16. The old Civil Service Commission for example, has given way to a modern, economically designed, Office of Personnel, created by Act #345, approved May 12, 1947.
major efforts at industrialization are being made through the Industrial Development Company and the Development Bank. The Industrial Development Company has already established a number of factories in key industries such as the cement, glass, paper, and shoe industries. The Development Bank provides long-term loans for promising private industries. A highly efficient power system has been put together by the Water Resources Authority, the low rates of which compare favorably with the prevalent rates in key industrial areas in the United States. The land policy of the Island is being partially remodelled by the Land Authority, which has bought large sugar holdings from a number of corporations almost entirely controlled by absentee owners. Model sugar plantations are being run by the Land Authority in some of the expropriated land; highly successful proportional-profit farms have been established in other areas. Other land is leased in small lots, and at a low rent to small farmers, and low-cost

17. A number of subsidiary corporations have been created to run these factories: the P.R. Glass Co., the Cement Co., the Paper and Pulp Co., the Shoe and Leather Co., the Clay Products Co., and Telares de Puerto Rico, Inc.
housing projects have been built in land transferred to the Puerto Rico Housing Authority. The Aqueduct and Sewerage Service has acquired the water facilities formerly owned by the municipalities. Centralized management will no doubt make here, as in the case of the Water Resources Authority, for better service at a cheaper cost. The Agricultural Company has started a vital program of crop diversification and cattle raising. Popular model markets have also been established by the Agricultural Company in an effort to introduce modern marketing practices and as an outlet for its products. Finally, the Planning Board is in charge of calculating the insular income in the next few years and of drawing plans accordingly for government expenditures during that period.

Instead of putting the old governmental departments created by the Organic Act 18 in charge of this program, the Insular Government felt that new and more efficient organizations should be entrusted with such a program.

18. The Organic Act creates in Puerto Rico a Department of the Interior, a Department of Agriculture and Commerce, a Department of Health, a Department of Justice, a Department of Labor, and a Treasury Department. The argument has been repeatedly made that the present social and economic program should have been entrusted to these departments, and that, in fact, it is so required by the Organic Act.
which required the development of new techniques and of a new attitude towards the social and economic problems of Puerto Rico. Emphasis on the regulatory functions of government had to give way to emphasis on the service functions of government, and on the functions of promoting, developing and, if necessary, even engaging in "business" activities. A reshaping of the administrative branch of the Insular Government has indeed been found to be of absolute necessity to the success of the program. The new agencies have proved to have better reflexes to cope with the complex problems of our economy than the old governmental bureaus and departments.

Nothing comparable to what has happened in the executive branch has been even attempted as respects the legislative and judicial branches of the insular government. The need to carry governmental reorganization to the legislative and judicial branches as well has, however, been generally recognized. 19 The present

organization of our legislature stands in need of immediate reform. There is need for a greater continuity of the legislative process; the machinery for the consideration of bills must be made more efficient; the legislature must have better tools at its disposal to calculate the effects of proposed legislation, to detect areas in need of better legislation and to follow-up on past legislation. The organization of the insular courts stands also in need of reform. Our courts must be reorganized to attend to the increasing mass of cases with a minimum waste of judicial and social energy; the means must be found to attract the best available personnel to the Bench; what has been called the "business aspect" of judicial administration must be given further attention. It is the purpose of the following chapters to indicate a few major lines along which a reorganization of the legislative and judicial branches of the government of Puerto Rico may be conducted.
PART ONE

LEGISLATIVE REORGANIZATION
CHAPTER I.

POLICY GOALS

On February 12, 1946, ex-Governor Rexford G. Tugwell said in his message to the Legislature of Puerto Rico:

"The legislative process itself needs to be organized.....Legislatures have begun to ask themselves whether they are organized in such a way as to implement efficiently their policy-making powers; whether they are controlled unduly by those within or without the government, or within or without their own bodies - who know better what they want than the legislators do; whether they have sufficiently effective ways of appraising the mass of legislation which must be got through in limited sessions; whether they have any effective and constructive ways of appraising the work done at their behest by the executive or whether the departments escape the constructive criticism which they say legislatures ought to furnish....." 1

What are to be the policy goals to be sought by a reorganization of the legislative branch? Which shall be the means of attaining these specific goals? An answer to these questions has been partially attempted in the Introduction. The following are now submitted as the main points on which efforts to reorganize

the insular legislative branch should rest:

1. The main purpose of legislation is not simply to regulate the social and economic activities of individuals and groups, nor idly to sit by and see that rules of fair-play are being complied with, but rather the main purpose of legislation should be to promote the realization, and aid in the development, of democratic values in society, finding the most efficient and economical ways to satisfy social and individual claims.

2. To attain this end, lawmaker bodies must have adequate knowledge of how legislation has affected, and may in the future affect, the prevalent scheme of values. Not only is careful study preparatory to legislation required, but study of the effects of enacted bills must also be made. The job of lawmaking does not end, paradoxically, with the making of laws.

3. Studies of the effects of legislation will throw much-needed light on the problem of the limits of effective legal action. While we must avoid the view of the historical school that legislation is,
essentially, an interruption of normal processes of evolution, neither must we fall into the error of the Natural Law school of the eighteenth century and its vision of an ideal code with a detailed, eternally valid, unchangeable content. Rules imposed by legislation, in the same way as rules created by adjudication, must be continuously examined and re-tested in order to determine whether they satisfy human wants in the most efficient way possible. In many instances, the satisfaction of human claims entails the use of other techniques of social control besides legislation.

4. In the light of the above points, lawmaking must therefore be viewed as a continuous process. Lawmaking is not something that can be effectively done in a few days of work every one or two years. The legislative process stands in as great a need of continuity as the administrative and the judicial processes.

5. The above wider view of the function of legislation in our society requires that legislatures be provided with better tools and techniques with which
to accomplish their purposes. Attention must therefore be also directed to the matter of legislative aids and to the mechanics of lawmaking, including bill drafting and the procedure for the consideration of bills.

The need for a closer study of the legislative branch has long been felt by American legislatures. Already in 1890, informal efforts were made to provide the legislators with technical aid, a cornerstone of the modern reform movements. Although the need has long been felt, actual reform, however, has been slow in many jurisdictions. Only twelve states, for example, have set up to date legislative councils or comparable agencies; nineteen states still have no official drafting agencies, and twelve states do not provide any legislative reference services whatsoever. A number of key states, however, have been increasingly interested in the problem of legis-


The legislature of Puerto Rico has already made a start along the road towards a more efficient legislative organization. Act No. 313, approved May 15, 1945, creates a Permanent Legislative Commission for the purpose of conducting surveys during recesses that may enable the Commission to formulate a legislative program. This will assure the legislative process, once the institution takes root in our medium, a desired measure of continuity. The creation of a legislative council, however, is not alone sufficient to adapt our legislative institutions to modern conditions. More legislative aids have to be devised, the rules of procedure must be carefully studied with

a view to making them simpler and more realistic, the committee system must be reconditioned, legislative drafting techniques must be modernized, methods for greater coordination of legislative and executive activities must be found. These are problems which can be faced and solved by our Legislature. Besides these, there are questions of legislative reorganization that are up to Congress, such as length of sessions, salary of members of the legislature, adoption of the unicameral principle, if advisable, widening of the field of legislative action, and reform of the veto procedure.

The legislative branch in Puerto Rico has in the past, due to its subservience to Congress and its practical inability to override the Governor's veto, been in a somewhat disadvantageous position, as compared to the other branches of government, particularly the executive. Now that greater home rule may possibly be obtained, our legislature should be made ready to take up a more important role in our government. The opportunity for action looks now particularly inviting.
CHAPTER II.

CONTINUITY OF LEGISLATIVE ACTION

A. The legislative council idea.

An observer with a bent for natural-law thinking may, from a glance at the way state legislatures work, conclude that it is in the nature of things that legislatures should work by spurts. The legislatures of forty-three states still meet but once every two years. Not much head-way has been made—in fact, some ground has been lost—since 1880. Out of the thirty-eight states belonging to the Union at that time, six had annual legislative sessions, thirty-one had biennial sessions, and one (Alabama) held quadrennial sessions. Some have experimented at different times with both biennial and annual sessions. The most striking example is, perhaps, that of Massachusetts, which changed from annual to biennial sessions in 1938, and then reverted to annual sessions by amendment to its Constitution, approved at the election of November, 1944.

Biennial sessions appearing firmly entrenched
in most states, in spite of the increasing belief as to the advisability of providing for annual sessions, a method of allowing the legislature an opportunity for advance study of important community problems had to be devised. The legislative council has been the tool created for this purpose. 4a

A legislative council is, as a rule, a relatively small body of legislators in charge of preparing during the long period between sessions the legislative program for the next session. Most legislative councils may study proposals from any member of the legislature or of the administration. They can also initiate proposals. Other councils, like the Virginia Legislative Council, however, only study matters which either the governor or the legislature submit to their consideration. If a continuous study of community problems is desired, leading to the preparation of a comprehensive legislative program, the Virginia formula appears to be inadequate.

A legislative council was first created in 1931 by the state of Wisconsin. Twelve states have followed

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Wisconsin, in the meanwhile, abolished its council, which in fact was never a true legislative council, as is known today. The Wisconsin Council was more in the nature of an advisory body to the Governor. Michigan also had and abolished a legislative council; its story is of importance in realizing some of the pitfalls to be avoided in setting up an effective council. The ineffectiveness of the Michigan council has been ascribed to the failure to provide a continuing research agency, the lack of cooperation between the Governor and the council, the provision that the council must only operate between sessions, and the reduction of appropriations.

Adoption of a legislative council has been proposed in many other states, notably in New York, by its Constitutional Convention Committee, and in Hawaii, by the House Holdover Committee of 1939.

The goal - in respect to which legislative councils are just an intermediate step - should be a continuous legislature, meeting throughout the year at frequent intervals. Until the time comes when that idea turns from theory to experiment, the legislative council is a much-needed tool.

B. The Puerto Rican experiment.

The legislative body created by the Foraker Act of April 12, 1900 could convene for as long as sixty days in any one year. Extraordinary sessions could be called by the Governor. The Act did not specify any limit to these special sessions. The Executive Council, formal upper house of the Legislative Assembly, could meet continuously throughout the year, which would make a part of the legislature of Puerto Rico one of the earliest examples of a continuous legislative body, if only the Executive Council had had the faintest trace of legislative character about it. None of the eleven members of the "Upper house" was an elective official, all were appointed by the

10. 31 Stat. 77.
11. V. section 29 of the Act.
President of the United States, with the advice and consent of the Senate. Until 1917, the executive branch clearly dominated the Puerto Rican picture.

The Jones Act of March 2, 1917, provided for a Legislature of Puerto Rico, consisting of a Senate, which was to take over the legislative functions of the Executive Council, and a House of Representatives, successor of the old House of Delegates. The new legislature was to meet biennially. The Act did not specify any closing time for regular sessions; special sessions to be called by the Governor were limited to ten days; it was the duty of the Governor to call the Senate to special session at least once each year in which a regular session of the legislature was not provided for. On March 4, 1927, the Jones Act was amended. The Legislature of Puerto Rico shall now hold annual sessions, beginning the second Monday of February and closing not later than April 15 following; the special sessions called by the Governor can last up to fourteen calendar days.

The reversion to annual sessions is not of itself enough to insure the continuous study by members of the

13. V. section 33.
14. 44 Stat. 1420, c. 503, s. 5.
legislature of our basic economic, political, and social problems, especially in view of the short sessions to which the Legislature of Puerto Rico is limited. Besides fighting for a Congressional amendment of the Organic Act that may abolish the time-limit as to regular sessions, the Insular legislature had a remedy within its reach for achieving a greater degree of continuity of legislative action: the creation of a legislative council. The Legislature of Puerto Rico reached for that remedy when it approved Act No. 313 of May 15, 1945.

Act No. 313 creates a Permanent Legislative Commission to "carry out legislative surveys during recesses of the houses between legislative sessions, and which will in each case make recommendations on legislation to both houses". Nothing else is said as to the functions of the Commission and little about its powers and duties. The Commission shall consist of seven senators and seven representatives, besides the President of the Senate and the Speaker of the House, who appoint the members of each house. The Commission may resolve itself into subcommissions that
may be sent abroad to make special studies of legis-
lation. The services of employees of the Insular
Government, of officials of the Legislature, and of
lay experts may be enlisted. Only the latter may be
paid. The Commission shall, at the beginning of each
regular session of the Legislature, make a report of
its work to both houses, including recommendations
which should lead to the more adequate drafting/bills.
The Commission does not have investigative powers.
The sum of $15,000 was appropriated for the fiscal
year 1945-46.

Act No. 313, although a worthy document as it
stands, leaves room for improvement. It is submit-
ted that the functions, powers, and duties of the
Permanent Legislative Commission may be more fully
defined and extended, in accordance with the recent
experience of other American legislatures and the
investigations of reference bureaus and lay agencies
engaged in legislative research. Accordingly, a bill
creating a Legislative Council is appended. 14a

14a. See Appendix I.
basis for possible amendment of the Act. The basic features of the bill are the following:

The first important difference between this bill and Act No. 313 consists in that the former makes the Governor of Puerto Rico an ex-officio member of the council. The Model State Constitution drafted by the Committee on State Government of the National Municipal League and published in 1927, which gave birth to the legislative council idea, favors the inclusion of the Governor in the Council. Only Kentucky and Connecticut, however, have followed the suggestion and now provide a non-voting membership for the governor. Colorado has a council uniting the governor and legislative leaders. It has been pointed out that, as a practical matter, it is preferable not to make the governor a member of the council because thus the reports of the council as a purely legislative body will be received with more confidence by the legislature and the responsibility of the legislature for developing its own program will be increased thereby.  

hand, if we conceive the function of a legislative council not to be simply that of preparing a legislative program with a view to specific solutions, but also that of compiling data on the major problems of the community, with a view to presenting to the whole legislature a more complete picture of the problems as to which a policy is to be devised, advantages can be reaped from the inclusion of the Governor in the council, resulting from intimate acquaintance with the views of a man also charged with the formulation and defense of a legislative program. Coordination of the legislative and executive programs is particularly important in Puerto Rico, provided the legislature is careful not to lose its measure of independence, in view of the fact that the legislature cannot override the Governor's acts, except through action by the President of the United States. Whan can be achieved through such coordination is seen in the vast economic and social program launched in Puerto Rico in the last five years. Still, better planned coordination could have prevented some undesirable features of the land program and could have brought about much-needed amendments to other vital laws.

A different view of the function of a legislative council leads to different theories as to the inclusion of the Governor as a member thereof. If we are only willing to grant the Council the sole function of preparing a legislative program, accompanied with the necessary bills to carry out the same (as was done in the case of the Michigan council)\(^\text{17}\), the inclusion of the Governor can hardly be justified.\(^\text{18}\) If we believe that a legislative council should also have the power to investigate the machinery of government with a view to detecting worn out parts and recommending consolidation and simplification of some agencies, as well as creation of others, the question is debatable. Kansas strikes a middle course in this situation by providing that the governor shall have the right to send messages to the council containing his recommendations and explaining the policy of the administration.\(^\text{19}\) If we consider the council as a prolongation of the legislature and as charged with

\(^{17}\) Compiled Laws of Michigan, Supplement, 1935, Act 206, Sec. 18.2-18.3

\(^{18}\) V. The discussion in Willoughby, W. F.: Principles of legislative organization and administration, Washington, 1934, pp. 591-597. Willoughby goes as far as stating that this is the only proper function of a legislative council.

\(^{19}\) 1933 Laws of Kansas, Ch. 207, Sec. 7, p. 309.
inquiring into important matters affecting the welfare of the community, and with devising methods for coordinating the efforts of different agencies in the solving of the same problems, the granting of membership to the governor seems advisable. We are often troubled in Puerto Rico with lack of coordination between government agencies. Agencies which owe their lives to the same social and economic principle and which are supposed to implement the same social ideal, often show remarkable confusion of policy. A body such as the legislative council may eventually develop, through constant touch - not interference - with the different aspects of government, the greatly needed over-all view, which should result in far-sighted, effective legislation.

The appended bill also includes added provisions as to membership in the Council, specifying that the more important standing committees of both houses shall be represented and that all appointments must be approved by majority vote of the respective houses. The former suggestion has not been widely accepted; the latter has been enacted by Kansas and Nebraska, two leading states in this movement. 20

20. 1933 Laws of Kansas, Ch. 207, Sec. 1, p. 208; 1937 Laws of Nebraska, Ch. 118, section 1, p. 421.
Act No. 313 does not make any provision as to term of office. Section 2 of the bill provides that members of the council shall hold office from the date of their appointment until the adjourning of the next succeeding regular session of the Legislature following their appointment. Provisions as to meeting, vacancies, and quorum are also omitted in Act No. 313. The usual provisions to this respect found in other acts creating similar bodies are incorporated in the bill, with the exception of provisions as to frequency of meetings. The proposed bill calls for more frequent meetings, at least six a year.

Section three of the bill, relating to salary and transportation in the performance of official duties, corresponds to an identical section in the Act.

Section five of the bill, relating to the powers and duties of the Legislative Council, harbors the provisions that constitute the main line of departure. The functions of the Council are here defined to a larger extent, and expanded. The main functions are to be: 1) collection of data on the government and general welfare of the Island; 2) preparation of a legislative

program in the form of bills or otherwise; 3) study of the system of local government with a view to making more efficient the organization of government; 4) study of methods of coordinating the activities of the various government agencies and of increasing their efficiency; 5) cooperation with the administration in devising means of enforcing the law and improving the effectiveness of administrative methods.

In the performance of its functions, the council shall have the power to celebrate hearings, to administer oaths, to issue subpoenas to compel the attendance of witnesses and the production of any papers, to appoint lay or legislative committees, to resolve into subcommittees, to appoint other members of the legislature as additional members to the council for a limited period of time, and to employ its own technical advisors or enlist the services of the Government experts. The final report of the council must be made public at least thirty days before the beginning of the annual sessions. Periodic reports may also be issued. The council is to avail itself of the facilities provided by the proposed Legislative Reference Office. 22

22. V. Appendix II.
The underlying theory of these suggestions has been already advanced in previous pages: the desirability of greater continuity of legislative action, the threefold conception of a legislative council as a fact-finding, planning, and coordinating body. So far, legislative councils have been conceived as single-function entities, empowered only to formulate a legislative program, or as dual-function bodies, the fact-finding power being added. It is submitted that factors operating in our political and social medium make it worth trying to endow our legislative council with a third function: that of helping to coordinate our government machinery.

How has the Permanent Legislative Commission worked in Puerto Rico? It has not worked at all. Born in 1945, the Permanent Legislative Commission died in 1946. What caused such premature death? Major causes, in my opinion, were too vague and narrow a conception of the functions of such a body and an inadequate law. A revision of Act 313 of 1945 may help to remedy this. Another major cause, probably the most important one, allegedly was the uncooperative attitude of the minority, which allegedly obstructed
the work of the commission and took the legislative council as a sounding board for attacks against past doings of the majority party, instead of concerning itself with the consideration of the legislative program for the next session. Members of the Permanent Legislative Council which belong to the majority party have also objected to the baring of the party's full legislative program to the minority well in advance of the legislative session, believing that an early attack may affect projects which have not yet fully matured. As, at the same time, the belief was rightly entertained that the minority must be accorded adequate representation in a legislative council, the only solution was thought to be the death of the Permanent Legislative Commission.

Conditions were certainly difficult for the legislative council idea to get a firm hold in our medium at the time it was launched. The majority party controls thirty-five seats out of thirty-nine in the House of Representatives and sixteen out of nineteen in the Senate. The minorities have not had enough weight since 1944 to be a real power in the making of
laws. They chose thereupon to concentrate on an
indiscriminate attack against every majority proposal,
denying to the legislative process, in the eyes of
some majority members, the invaluable criticism that
intelligent opposition may always contribute. Yet,
it should have been realized that resort to indisci­
minate obstructionist practices, or what be deemed to
be so, is one of the minor risks that democracy en­
tails. Total uncooperativeness and even malicious
opposition by minorities is one of the realities with
which legislatures must often deal. Just as this
attitude must be accepted in meetings of the whole
legislature as one of the courses of action open in a
democracy to members of the opposition, there is no
reason why it should not also be accepted in meetings
of that prolongation of the legislative body, the
legislative council.

What about the objection that majority members will
always be reluctant to reveal to the minority all their
plans for the next legislative session? It happened, for
example, during Tugwell's governorship that the policy was
laid down to have the Puerto Rico Communications Authority
buy the properties of the Puerto Rico Telephone Co., a subsidiary of International Telephone and Telegraph Co. Late in 1946, however, the policy was shifted, because of lack of funds, to sell instead the properties of the Communications Authority to the Telephone Co., unified ownership of the telephone facilities in the Island being thought conducive to better service. Consideration by a body like the legislative council might have conceivably caused some embarrassment in the early stages of the negotiations. In cases like this, a group of key administrators and legislators are, as a matter of practice, responsible for the early laying down of policy. This only shows, however, that a more unified policy group must supplement in certain matters, or at certain stages, the work of a legislative council. Such policy groups, however, cannot effectively supplant the work of a legislative council. Besides matters which involve delicate policy questions, a legislative council also considers proposals by other members of the legislature, the administration, and private groups, which must be thrashed out first and put into shape by a more representative and accessible group. Proposals which do not
bear a special interest to the administration and the majority party would find it very difficult to reach informal policy groups, of often changing and therefore indeterminate membership. In a good many subjects, moreover, like matters of local legislation, there is great need of reaching effective compromises about the bills that will be allowed to go through. This can hardly be a function of a small policy group in which key areas are not adequately represented. Finally, the fact-finding function of a legislative council can hardly be adequately served either by informal policy groups. The institution of the legislative council, in its proper form so successful in many states, should, it is submitted, be given another chance in Puerto Rico.
CHAPTER III.

TECHNICAL AID TO LEGISLATORS.

A. Legislative reference services.

The idea that legislation is a highly technical task in which the help of trained experts to advise the legislators is needed has met with greater success in America than the theory behind the creation of legislative councils. Thirty-eight states so far have made some sort of a start in providing some form of legislative reference services. The services offered are, generally, of three types: a) library and research services, b) bill drafting services, and c) statutory revision services. The agencies chosen for the performance of these services differ among the states. In some states, one or more of these services are performed through the State Library (in the case of Hawaii, the library of the University of Hawaii), in others, through the Office of the Attorney

General, the Governor’s Office, the Legislative Council, or an independent bureau. The ones most to be commended are those which have set up an independent bureau which renders all three services. Only twelve states, however, provide the three services; most of them do it through a separate Legislative Reference Bureau. 24

Legislative reference services have had a long history. 25 The pioneer effort was the establishment in 1901 of the Wisconsin Legislative Reference Department. There had been earlier informal attempts in New York and Massachusetts. The movement spread rapidly to other states; 1907 saw the establishment on a statutory basis of seven legislative bureaus, and twenty-one more were created by 1917. Recent years have also seen the creation of other legislative reference offices. The two most notable attempts are those of Arizona and New Mexico 25a (both created in 1937), which follow to a great extent the 1933 Model Act of the American Legislators’ Association.

25a. The New Mexico Legislative Reference Bureau was abolished in 1941.
Some authors catalogue legislative councils and legislative reference bodies into the single heading of "legislative aids." Some hardly distinguish the different functions of the two bodies. It is submitted that care should be taken to note that, despite some overlapping, the two bodies serve different purposes. Legislative councils are not simply, like legislative reference services, aids to legislation; they are fundamentally a part of the actual process of legislation. A legislative council is a prolongation of the legislative body; the reference services are tools for the use of that body. Reference services are nothing more than fact-finding agencies, whether the finding be of defects in statutes (statutory revision), of better wording of bills (bill drafting), or of ways in which a legislative problem has been handled in the past (research services). Legislative councils are also policy-forming, policy-formulating, and policy-enforcing bodies.

This is not to say that the idea of a legislative council and that of a legislative reference office must

26. Willoughby, W. F., op. cit., Chapter XXXV; Chamberlain J.P.: Legislative processes: national and state, 1936, Chapter XIV
27. V. Chamberlain, op. cit., pp. 254-257.
be embodied in two different agencies. It might well be believed that we should create a single agency combining the functions of the two bodies. This, however, would actually narrow the functions of the legislative reference office in an undesirable way.

The purpose of this office is not to serve a part of the legislature, but the whole legislature, as well as other government institutions. Providing technical help to the members of the legislative council in fact-finding, in the nature of research, and in the drafting of bills is just one aspect of the work of a legislative reference office.

B. Legislative reference work in Puerto Rico.

The second part of this chapter formerly consisted of a recommendation that legislative reference services be established in Puerto Rico. 28 This part of the thesis has been happily made obsolete by the creation in the Fall of 1946 of the Office of the Legislative Counsel.

The Office of the Legislative Counsel was first

28. The second part, as formerly written, is included in Appendix II: "An invitation to experiment." There are some vital differences between the bill proposed there and the law actually approved by the Legislature of Puerto Rico, which is included in Appendix III.
established by an administrative order of the President of the Senate and derived its funds from Act No. 390, approved April 22, 1946, which created the Library of the Capitol of Puerto Rico. On May 13, 1947, the legislature of Puerto Rico approved Act No. 397, in which the functions of the Office of the Legislative Counsel are specifically described.

The legislative reference bureau created by Act No. 307 of May 13, 1947, shall render services exclusively to members of the Legislature of Puerto Rico, as stated in section one of the Act. As a matter of practice, however, the bureau has rendered, and indeed should continue to render so far as possible, a limited service to the Office of the Governor and to some administrative agencies.

The Office of the Legislative Counsel combines the three main types of legislative reference services: library and research services, bill drafting services, and statutory revision and compilation services. The bill drafting service consists, at times, of the determination that no legislation may be enacted on a given question, as when the insular legislature plans...
to legislate in a field over which the federal government has been granted a monopoly. The drafting of committee reports and the preparation of model forms for bill drafting for distribution to government agencies and interested private parties are other services that the bureau is supposed to render in this respect.

Other research functions assigned by Act No. 397 of 1947 to the Office of the Legislative Counsel are: the carrying on of research on the social and economic result of such laws passed by the Legislature and on the operation of such government institutions as the Legislature may indicate; the preparation of research reports on given legislative problems, either at the request of members of the legislature or on its own initiative; the preparation of a legislative manual; and the publication of a new edition of the revised statutes.

A small reference library is also to be established by the Office of the Legislative Counsel, which project is well under way. The library division is establishing an exchange service of government publications with corresponding federal and state agencies.

The Office of the Legislative Counsel has so far
rendered services to two extraordinary sessions, one in December, 1946, and the other in June, 1947, as well as to the regular session of 1947. Substantially all of the main policy bills enacted at these sessions were drafted, or reported upon, by the Office. Work has been begun in drafting the key measures for the 1948 regular session. As was the case with the 1947 session, the goal striven for is to have the most important and controversial bills ready before the session begins, so that they may be had under advance study by key members of the legislature. This system has so far allowed for more time for research preparatory to drafting and for better planning of the legislative session by the legislative leaders.
CHAPTER IV

THE COMMITTEE SYSTEM

A. Committee organization.

1. Size and number of committees. The revision of standing committee procedure has been a major theme in modern legislative reorganization movements. The main effort has been directed towards the consolidation of committees. Little consolidation was seen between 1931 and 1942. The average number of committees per state was 71.4 in 1931; in 1942 it was 71.1. The average state Senate had about thirty standing committees; the average House of Representatives had about ten more. That is still the situation in many states; others have been quite successful in reducing the number of committees and of committee seats. California, for example, has been able to reduce its forty Senate standing committees to twenty, and its fifty-seven Assembly


30. The Legislature of California, supra, pp 286-292.
committees to twenty-seven. The legislature of California consists of forty senators and eighty representatives. The average number of committee seats per state senator ranges from 1.4 and 2.4 (Wisconsin and Rhode Island), to 17.3 and 18.3 (North Carolina and Georgia). The average number of committee seats per state representative ranges from 1.4 and 1.5 (New Hampshire and Massachusetts) to 10.0 and 12.8 (Oklahoma and Georgia).  

An interesting trend can be detected in the legislature of Puerto Rico. In 1929, there were only ten standing committees in the House of Representatives, representing a total of eighty-two committee seats. In 1945, the number of committees had sizably increased to 17, allowing for one hundred and thirty-five committee seats. The number of representatives, thirty-nine, has remained constant. The average number of committee seats per representative thus has increased from 2.1 to 3.4. I do not believe that a point of danger has by any means been reached by our House of Representatives, as its number of committees and number of seats per member compare well with state averages. The tendency, to a steady increase, however, is

one closely to be watched.

When we come to the Senate, the picture grows somewhat more alarming. In the short term of three years, from 1942 to 1945, the total number of committee seats had increased from seventy-six to a hundred and forty-six; the twelve standing committees of 1942 had grown into sixteen committees in 1945. 32 The average number of committee seats per senator (there are nineteen senators in all), is now 7.6 as compared to just four seats three years ago. Careful consideration should be given by the Legislature or a revived Permanent Legislative Commission to the advisability of consolidating some standing committees exercising kindred functions, usually a better procedure than just reducing the number of committee seats. A few committees, with a fairly large membership that may allow for the appointment of efficient subcommittees, may often acquire a firmer grasp of a wide field. Less committee assignments should tell in better reports and a more searching analysis of bills.

2. Appointment of committees. The committee system

32. The number of committees in 1947 still remains at sixteen.
in Puerto Rico has its constitutional sanction in paragraph 7 of Section 34 of the Organic Act 33, which states that "no bill shall be considered or become a law unless referred to a committee, returned therefrom, and printed for the use of the members; Provided, that either house may by a majority vote discharge a committee from the consideration of a measure and bring it before the body for consideration". Both the House and Senate rules deal with some aspects of committee procedure. A discussion of their main provisions follows.

The Speaker of the House and the President of the Senate have the power to appoint the standing and special committees of the bodies they preside (House Rule III, 1; Senate Rule IV, 1). This is a common provision in the House rules of most states. Many states, however, have taken away that power of appointment from the President of the Senate and vested it in the president pro tempore, elected as leader of the majority party (such is the procedure in Connecticut and New York), or on a committee on committees (as in Nebraska, Kentucky, North Dakota, and Minnesota). 34 The usual reason given for the adoption of such procedure is, as Chamberlain writes, "the anomaly of having the standing committees appointed by an officer

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33. 39 Stat. 960 (1917).
34. V. Chamberlain, op. cit., pp. 85-86.
This type of thinking betrays, to my mind, an erroneous view of the function of rules for legislative procedure. I fail to see why we should talk about "anomalies", instead of looking for the actual reasons that make us choose some form of logic, or lack of it. Rules must not be selected for the way they fit a preconceived, abstract logical pattern, but for the promise they hold of working out. Of course the reason for some states depriving the President of the Senate of the power to appoint the standing committees is the desire to avoid having a person who may well not be a member of the majority wield such an important power in a way to hamper the will of the majority. There is no need for such action in Puerto Rico, as the President of the Senate has so far been the leader of the majority party. Life comes here dressed in different logic, talk about "anomalies" should, in such a context, be meaningless.

The Chairman of each standing committee appointed by the presiding officer of each house will be the man first named in the list of members selected for work in that committee. 35 This is the procedure usually followed

35. H. Rule X (2); S. R. VIII (3).
in state legislatures. In Rhode Island, the committee members elect the chairman (Senate Rule 6). In Maine, the House of Representatives may require an election by ballot, the person receiving the most votes becoming chairman.

Whenever the chairman is absent, the member whose name was read second by the presiding officer when appointing the committee, will serve as chairman (H. R. X, 2; S. R. VIII, 3). Whenever a member, other than the chairman, is absent for more than three days, the presiding officer may appoint a legislator to substitute the absent member until he comes back (H. R. II, III, 10; S. R. IV, 9). It is questionable whether the latter rule applies to the case of vacancies. It is suggested that a provision be added to the rules by which the presiding officer of each house is specifically granted the power to fill vacancies in standing committee chairmanships and other committee seats. Jefferson's Manual of Parliamentary Practice, to be followed by the Legislature of Puerto Rico when its rules fail to make provision as to any given matter (H. R. XXXIII, 2; S. R. XII, 2), is silent on this respect.

In the House of Representatives of the United States, standing committees and their chairmen were appointed by
the Speaker. Rule I, however, adopted in 1911, makes provision for election of the committees and their respective chairmen. \(36\) The Senate procedure is substantially the same (rule XXIV).

No suggestion as to a radical change of procedure as to this matter in Puerto Rico will be made. It is submitted, though, that the appointing power of the Speaker of the House and the President of the Senate, should be limited in two respects. The first suggestion is that legislators who have served in a given committee during previous legislative sessions should have the right to be appointed members of that committee if they so desire. There is great need for a binding convention to this effect. \(37\) The training of members in a given field of legislation is highly desirable. This can best be accomplished by continuity of service in standing committees.

The convention of following a seniority rule in the appointment of committee chairmen has been another way of working towards that ideal. A second desirable limitation is that minority leaders be given the power to select the minority members who shall serve in the various standing committees.

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committees. The presiding officer of each house will, of course, be still the one to determine how many committee seats shall be available to the minority, which must be represented in all committees.

B. Bill reference.

Another important power of presiding officers - affecting committee work, rather than committee organization - is that of determining to which committees bills should be referred in the legislature. This power is generally exercised by the presiding officers of state legislatures, even though the rules of most states fail to make provision as to who shall refer bills to committees. This might be a dangerous procedure where there are no provisions as to changing the reference of a bill by action of the house.

In the House of Representatives of Puerto Rico, the Speaker specifically has the power to refer bills to committees (rule XII, 2, expresses this in a backhanded way; a clearer provision to this effect should be added to rule III, concerning the powers of the Speaker). Two-

38. Winslow, C. I.: State legislative committees: a study in procedure, Johns Hopkins University, 1931, p. 16
thirds of the members present at a given session, however, may vote to refer the bill to another committee (rule XII, 2). A bill reported out to the House by a committee may be sent back to the same committee or referred to another committee by the House (rule XII, 5). Thus, once the Speaker has referred a bill to a committee his power of referral is spent. The subsequent fortune of the bill rests in the hands of the committee and the House. It must be supposed that the House may thereupon act, on the analogy of rule XII, 2, on the vote of two-thirds of the members present, although the rules are silent as to this point.

Whenever the Senate returns a house bill with amendments, however, it is the Speaker again who may refer the bill to committee. The House may overrule him -- presumably, again, by the vote of two-thirds of the members present -- and refer the bill to the Committee of the Whole (rule XX).

In accordance with the spirit of the other rules, this section should be amended to read "to the Committee of the Whole or any other committee". As respects Senate bills, the rules are ambiguously worded. Rule XII, 6, provides that, after a second reading "el proyecto o resolución
The rules of the Senate are silent as to who is to have the power to refer bills to the various committees. Such a silence has been interpreted by state legislatures as actually allowing the presiding officer to undertake the exercise of that power. 39 Senate rule XVI, §, simply states: "Los proyectos y resoluciones del Senado y la Cámara de Representantes, después de su primera lectura, pasarán a las comisiones respectivas". 40 Note that the

40. Only Spanish editions of the House and Senate Rules are available for this study.
same rule applies to both Senate and House bills.

Senate rules XVI, X and XXII may throw some light on the proper interpretation of rule XVI, 3. Rule XVI, X clearly provides that when the House of Representatives returns a Senate bill with amendments, the Senate may decide immediately to discuss the amendments or to refer the bill to the appropriate committee. Is this to mean that it is the whole Senate who has the power to refer all bills to committees, whether they are introduced for the first time or returned from the House, or should this be interpreted to mean nothing more than what it says, thus limiting the rules only to returned bills amended by the House? Rule XXII further confuses the issue by providing that in case a motion to send a bill to more than one committee is approved by the Senate, the President shall be the one to select the committees to which the bill shall be referred. It is submitted that the Senate rules should be cleared of their lack of uniformity and ambiguities by adoption of a single, uniform procedure in respect to original Senate bills, Senate bills returned by the House with amendments, and

41. The text of Senate rule XVI, X is as follows: "Cuando la Cámara de Representantes devuelva con enmiendas un proyecto del Senado, éste podrá considerar inmediatamente las enmiendas, o ordenar que pase el proyecto a la comisión correspondiente."
House bills referred to the Senate. Following House procedure, it is highly desirable that the Senate delegate to its President the power to refer bills to the corresponding standing committees, subject to the provision that two-thirds of the members present may overrule a decision of the President on this point and send the bill to another committee. The House rules, whenever inconsistent with this procedure, should be amended.

We should strive towards a system of joint rules in our houses. The membership of both houses being small—unlike the situation in most state legislatures, and in Congress, in which the lower house is a large, often awkward and unwieldy, body, needing special rules to assure speedy action—there is nothing in the nature of things that calls for different procedure in the two chambers of our Legislature. A unified procedure, a great step towards an ideal of unicameral action, will greatly aid in the achievement of greater cooperation between the houses, and in the understanding by each legislator of the workings of the legislature as a whole. This is a necessary step, moreover, in establishing a system of joint committees, which subject will be later discussed.
differences between the houses will be cited in other portions of this thesis. These remarks are hereby incorporated by reference in each such instance. Often has one of the houses developed a point of procedure highly helpful to the speedy and efficient consideration of legislative problems while the other house is still struggling with an old-fashioned, cumbersome procedure. It is suggested that a joint special committee on the revision of the rules be created to draft joint rules for our entire Legislature. The desirable features of present House and Senate procedures should be incorporated in the joint rules, together with convenient devices developed by other legislatures and as yet untried in Puerto Rico.

The Senate rules make it impossible for a standing committee to kill a bill by its action alone. Rule XVI, 4, provides: "El Senado podrá, por mayoría absoluta, eximir a una comisión de la consideración de cualquier proyecto, y traerlo ante él para ser considerado." Also bear in mind that Senate rule VIII, 6, specifies that if a committee does not render a report within fifteen days after a bill has been referred to it, the Senate shall then be free, by vote of an absolute
majority of its members, to refer the bill to the Committee of the Whole. The principle embodied in Rule XVI,42, is found in section 34 of the Organic Act,42 except that it is not clear whether the section refers to action by a simple or an absolute majority. The House rules do not contain a provision equivalent to Senate rule VIII,6. House rule X,6, in fact, specifies that "las Comisiones deberán informar a la Cámara sobre los asuntos que les fueran encomendados, y la fecha para la presentación del informe será fijada por la Comisión (italics supplied). En caso de divergencia en cuanto a la fecha para la presentación del informe, el Presidente fijará el plazo, el que no se demorará sin su consentimiento". Section 34 of the Organic Act and House rule XII,2, provide the machinery for preventing a committee from permanently burying a bill. When a committee delays a report, the House may either send it to a different committee (XII,2) or bring it to the floor for consideration of the full House (section 34 of the Organic Act.) House rule XVII, on the Committee of the Whole, is sufficiently broad, perhaps, to allow consideration by that committee.

42. supra, p. 27
once section 34 is brought into play. As has been seen, the Senate rules are more explicit as to the latter point, action by the Committee of the Whole being possible, if the Senate so decides, in case a standing committee fails to report within the time fixed by Senate rule VIII.6. While the House rules do not fix a time-limit for filing of committee reports, the Senate rules do not allow the Senate to send a bill to a different committee, except when a committee has already reported on the bill (rule XVI.16). The desirable features of the House and Senate rules on this point should be combined and stated in a more simple, comprehensive set of rules.43

No clear provision is made in the House rules of as to the question whether petitions, memorials, and resolutions should follow the same procedure as that specified for bills. Note that section 34 of the Organic Act refers only to bills in setting forth the requirement of action through committees. House rule XIII.12, specifies that "las peticiones, memoriales, comunicaciones u otros documentos dirigidos a la Cámara, podrán ser presentados por el Presidente o por los

43. Willoughby, W.F.: op. cit., p. 606
Representantes, explicando suscintamente su texto, y no serán discutidos en la misma sesión en que fueron presentados, a menos que lo acuerde la Cámara, y quedarán sobre la mesa para ser discutidos por órden de presentación. Although rule XIII refers to discussion of measures, it may serve as basis for an argument that only bills and joint resolutions (see House rule XII,2) have to go through committee examination. This argument may be strengthened by reference to rule XIII,2, which refers only to bills and joint resolutions. It is greatly to be doubted whether the House of Representatives should dispense with committee assistance in all cases outside of bills and joint resolutions. I take it that memorials, petitions and resolutions other than joint resolutions are, as a matter of custom, sometimes referred to committees. Be that as it may, this great gap in the House rules should be filled. It is submitted that compulsory reference of all legislative measures to the various standing committees should be provided for by the rules, subject to a decision to the contrary by vote of an absolute majority of the members, in the case of any legislative measure.

The Senate rules do include a provision estab-
lishing the procedure to be followed in the handling of memorials and petitions. Senate rule IX,1, states that "las peticiones y memoriales dirigidas (sic) al Senado les remitirá el Secretario, al recibirlos, a las comisiones correspondientes sin dar cuenta con ellos al Senado. Se exceptúan de esta regla las peticiones y memoriales que traten asuntos de carácter general". Petitions and memorials of a public nature presumably are to follow the same procedure as that established for bills and resolutions. Note that Senate rule XVI,3,44 is much more inclusive than House rule XII,2, the former referring to all types of bills and resolutions.

C. COMMITTEE PROCEDURE

Little is said in the House and Senate rules of the Legislature of Puerto Rico as to the procedure to be followed by standing committees in their meetings. Who shall control the proceedings, the committee itself, acting by majority vote, or the chairman? What rules of parliamentary procedure are to govern the meetings? In the House of Representatives of the United States,

44. See p. 51, supra.
the rules of which make no provision as to the
first of these questions, the power to control
the committee proceedings has traditionally re-
tained on the chairman.45 The arbitrary exercise of
this power by committee chairmen led to the drafting
of paragraph 48 of Rule XI46, which does away with
the former power of the chairman to prevent action
by refusing to call a committee meeting. Rule XI
specifies that House standing committees shall meet
1) on all regular meeting days selected by the
committee; 2) upon the call of the chairman of the
committee and, 3) upon failure of the chairman to
call a special meeting within a specified period
requested by a majority of the committee members, at
the date specified in their written request.

The rules of the Puerto Rico Senate state
that every standing committee must hold a meeting
at least once a week (rule VIII,8). The House rules
are silent as to this matter. Incorporation into the
House rules of a provision similar to that of the
Senate, plus machinery similar to that of the United
States House of Representatives for the calling of special

meetings, seems highly desirable.

Every Senate standing committee having to meet at least once a week, it is suggested that a schedule of meetings be prepared well in advance in a meeting of the President of the Senate and the chairmen of the standing committees. The committees meet when the house to which they belong is in session? The Senate rules are silent in this respect, but House rule XXXIII, 3, by implication states that this shall be permissible only during the last ten days of session. Conceivably, this could be achieved at other times by a motion to suspend the rules, provided that the motion so to do be announced one day in advance, a requirement which is waived during the last ten days.

As to the rules of parliamentary practice to be followed in committee proceedings, the United States House of Representatives adopted in 1931 the provision that the rules of the House will govern committee proceedings so far as applicable, except that a motion to recess from day to day is made a

46a. Provision for such schedule is made, for example, by both the Senate and Assembly rules of California.
motion of high privilege in committee proceedings.\footnote{47}

No such provision is found in our House or Senate rules. Provision should be made in the rules as to this matter.

Are minutes of committee meetings to be kept?

The rules of the Puerto Rico Senate (rule VIII,8) require that an account be kept of the meetings held by and matters decided by, as well as measures submitted to, the standing committees. The House rules are again silent in this respect. This is another desirable feature of the Senate rules that should be incorporated into the House rules.

No provision being made to the contrary, can committees act without the presence of a quorum?

Theoretically, they can, in the present state of the rules, even though a custom to the contrary may have been developed. The Speaker of the United States House of Representatives, confronted with the necessity of making a decision as to this very point, held on June 17, 1922 that committees can only act when a quorum is present.\footnote{48} Quorum requirements is another subject

\footnote{48} Willoughby, W.F., \textit{op. cit.}, pp. 363-366. The federal Senate rule XXV,3, specifies a quorum of committees.
that should be dealt with by much-needed rules on committee procedure.

Committee meetings are of a private nature. The rule of the Puerto Rico House of Representatives is somewhat more explicit than the Senate rule. House rule X,4, provides that "ninguna persona, exceptando el Presidente de la Cámara, tendrá derecho a penetrar en el recinto donde actúan las Comisiones, sin el consentimiento de éstas". Senate Rule VIII,4, simply states that "las sesiones de las comisiones permanentes serán privadas". Nothing appears as to whether other Senators are to be excluded from committee meetings. Custom brings this usually to the direction of the committee.

The American practice - a unique feature of American legislatures - of providing for public hearings of bills, is followed in Puerto Rico. House rule X,5, established that the committees may, at their own initiative, hold public hearings in order to hear and receive statements and reports from private parties, in making an inquiry on any measure referred.

to the committee for study. The Senate rules make a different provision as to who shall decide when public hearings are to be held. While the House rules let the committee itself decide, Senate rule VIII,4, states that it shall be the Senate who may determine whether public hearings are to be held or not by a committee, on a given matter. It is submitted that the best rule, again, is a combination of the two. It may well be accorded that public hearings shall be held as the committee may determine, except that public hearings must also be held by a committee whenever the appropriate house so decides.

In respect to the holding of public hearings, the chairman of a Senate committee may subpoena witnesses and take oaths (rule VIII,4, of the Puerto Rico Senate). The rule is not clear as to the power to request the furnishing of books, accounts, and other information. The House rules do make provision for the request by the Committee chairman of "informes" from any person, as well as for citing witnesses and compelling witnesses to testify (House rule X,5). The House rules are silent as to the taking of oaths. As
it is to be doubted whether the provisions of section 34 of the Organic Act as to the subpoena powers of the Legislature of Puerto Rico may be extended to committees in the absence of an express delegation by the legislature, it is therefore suggested that the House and Senate rules be revised better to provide for these matters.

Both Senate and House standing committees in Puerto Rico must report on all measures referred to them (Senate rule VIII,5, House Rule X,6). The date for the filing of the reports has already been discussed. The minorities have the right in both houses of filing a dissenting report, or having their dissenting vote recorded (Senate rule VIII,7, House rule XXV).

D. JOINT COMMITTEES - A PROPOSAL

Leading writers on the legislative process are in general agreement as to the benefits to be derived from resolving most, if not all, of the present standing committees of each house, into a set of joint committees. J.P. Chamberlain, after commenting on the salutary ef-

50. V. supra, pp.
facts that absolute control by one party of the legislature and the governorship has brought upon Massachusetts, says: "Massachusetts leads in another form of committee work, the joint committee, composed of members of the appropriate committees of both chambers, with a larger representation from the lower house than from the senate, but with a senator as chairman. Joint committees report their bills out to either chamber, so as to secure a fair distribution of business, except that money bills go to the lower house. The important taxing and judiciary committees meet in joint session, though not properly joint committees. In Massachusetts this procedure has been successful in shortening the time of consideration, and in the lessening the labors of those interested in legislation who have to follow meetings of one chamber instead of two committees.... On minor measures, there is no good reason why the joint committee should not be used in any legislature, even when there is a different party control in the two chambers; but important bills, especially party bills, could not be considered without complete party control of both houses."

5. *Legislative processes: national and state*, p. 91
system of having an unofficial committee of leaders passing on all important measures, as another way of reaching the same end. Waste of action cannot be prevented through a system of joint committees. Moreover, the purpose of joint committees is not simply to shorten the time of consideration of measures and to lessen the labors of the legislators, but also to bring about closer cooperation of the houses in the handling of bills, to channel in a better way legislative effort, to avoid shifting of responsibility by the houses, and to make possible a more thorough consideration of measures. The success of the Massachusetts joint committee system, as well as that of Connecticut, Maine, and Vermont, is ample proof of the way these purposes can be carried out. It is submitted that the purposes served by joint committees cannot be served as well by an unofficial committee of leaders.

W.F. Willoughby writes in respect to joint committees: "...with possibly one or two exceptions, the state legislatures have failed to work out the problem of committee organization in as satisfactory manner as has the federal House of Representatives. In one respect, however, certain of the states, of which Massachusetts,
Connecticut, Maine and Vermont are leading examples, have made an advance over congressional practice. This consists in the adoption of the joint committee system for the consideration of most, if not all, proposals for general legislation. Practically all persons who have made a study of the workings of our state legislatures unite in commendation of the practice.52

Recent years have seen in Puerto Rico a tendency towards joint committee action. The chairmen of many standing committees in the two houses often meet informally to discuss a given legislative measure. A recently formed "comité consultivo",53 a sort of steering committee not unlike New York's committee of leaders, also helps in the consideration of measures. It is submitted that these budding institutions be developed to their full extent. The joint committee custom should be raised to the level of norm. The conditions for starting a total system of joint committees are at present ideal, one party being in full control

53. The 'comité consultivo' is composed of the following ex-officio members: The President of the Senate, the Speaker of the House, and the Vice-President, the floor-leader, and the chairman of the Finance committee of each chamber.
of the two chambers. The Permanent Legislative Commission, if the Legislature so determines, could make it part of its business to study the joint committee system of Massachusetts, Connecticut, Maine and Vermont, with a view to recommending, if it is deemed advisable, ways of adapting the system to Puerto Rico.

The present comité consultivo should also be encouraged, as it in no way conflicts with a joint committee set-up or with caucus proceedings. Although there be some overlapping, it will be the primary job of joint committees to see, among the matters referred to them, what are the things to be done; it will be the business of the comité consultivo to see that they are done. Another vital function of the comité consultivo is the sorting and preliminary classification of bills as respects the action to be taken, which facilitates the work of both the caucus and the standing committees.

54 With the establishment of the comité consultivo in fact, fewer caucus meetings have had to be held.
CHAPTER V.

A GLANCE AT OTHER PROCEDURAL MATTERS.

A. CONSIDERATION OF BILLS

1. General.

Rule XXI of the federal House of Representatives provides:

"Bills and joint resolutions on their passage shall be read the first time by title and the second time in full, when, if the previous question is ordered, the Speaker shall state the question to be:

Shall the bill be engrossed and read a third time?
and, if decided in the affirmative, it shall be read the third time by title, unless the reading in full is demanded by a Member, and the question shall then be put upon its passage". As a matter of practice, debate on a bill occurs only on its second reading.

After a bill has been reported to the House by the Committee of the Whole, the member making the motion that the bill enter its third reading usually accompanies it with the motion for the previous question,
which motion is generally carried. All debate, as a
rule, takes place in Committee of the Whole. In both
houses of Congress it is customary that there be a
committee report on a bill before it is put on the
calendar. Senate procedure is substantially similar
to the above, except for the fact that the federal
Senate has not adopted the English institution of the
Committee of the Whole.

Congressional procedure has been the basic
source of our rules on this subject, as is the case
with many of the other rules. There are some notable
differences, however, between the rules of our House of Represen-
tatives and those of our Senate. House rule XII 1
specifies that bills and joint resolutions shall be
read three times before they may be passed. Hae
Pound has written: "It is usual in constitu-
tions to require bills to be read three times before
each house of the legislature, one reading to give
the legislators time by which it could be made sure that
they were voting on the same matter as that which they
had voted on before; a second reading to read the
printed form, the reason for which is obsolete, and a
third reading in order to correct any mistakes in the
printing." Sources and forms of law, 21 Notre Dame Lawyer 289 (1946).

The debate, as a rule, takes place in Committee of the Whole. In both

Senate rule XVI,1, includes that provision and then goes on to say that the readings must take place in three different days. The House rules, however, are so drafted that actually no two readings could be had on the same day, except as provided by rule XXXIII,3,b, dealing with suspension of the rules. In one respect, though, Senate rule XVI,1 is wider than House rule XII,1. The former not only applies to bills and joint resolutions, but also to concurrent resolutions and House bills. The House procedure in regard to resolutions is briefly outlined in rule XII,7. House resolutions must be discussed and voted upon on being proposed, in the same manner as motions (see rule XIII,6-10). Presumably, concurrent resolutions are to fall within the scope of House rule XII,7.

The first reading of a bill or joint resolution in the insular House of Representatives occurs on its introduction. Only the title and the name of the author may be read at this time (House rule XII,2). The Senate procedure again differs in that the Senate may accord that the bill be read in its entirety; otherwise, only the title shall be read (Senate rule XVI,1). Even greater differences are revealed in the
The second reading in the House shall occur the day after the first reading; the bill will then be read in full, unless the House decides that the second reading shall also be by title. Immediately after the second reading, the Speaker shall ask the House whether the bill is to be considered. If a majority of the members present answer yes, the bill will then be referred to the appropriate standing committee, once it is printed and translated; otherwise, the bill or joint resolution is thereby killed. Note that, contrary to federal procedure and to the procedure followed by the insular senate, as we shall soon see—a bill may be killed in our House of Representatives before the standing committee—or anybody else, for that matter—has had a fair chance of studying the bill. A legislative body should not refuse to act on a measure before it has knowledge of the full facts and the advice of its experts—the standing committees—in the field. It is submitted that, in accordance with current legislative practice, it should be required that all bills introduced in the House of Representatives shall be referred, after their first reading, to the corresponding standing committee.
The insular Senate rules do include such a provision.\textsuperscript{55} Once a committee reports on a bill, it will go for consideration to the committee of the whole—a distinguishing characteristic of our system is the use of committees of the whole in the two chambers of our legislature—\textsuperscript{56} where it will be read for the second time. The third reading occurs before the full Senate, after the Committee of the Whole renders its report.

There are no provisions in the House rules as to a specific time when a bill shall go for consideration to the Committee of the Whole. House rule XVII, states that the House may, at any moment, upon motion of the Speaker or any Representative, resolve into Committee of the Whole for the consideration of any matters which it may deem advisable so to consider.

\textsuperscript{55} Senate rule XVI,3, reads: "Los proyectos y resoluciones del Senado y la Cámara de Representantes, después de su primera lectura, pasarán a las comisiones respectivas. Los del Senado deberán ser impresos antes y traducirán al inglés después de su aprobación en tercera lectura, o antes, si así lo ordenara el Presidente o el Senado."

\textsuperscript{56} The basic features of our use of the Committee of the Whole are discussed infra, pp. 79-84.
Note that approval of a bill by the Committee of
the Whole House is not equivalent to a second
reading of the bill, as is the practice of the fe­
deral House of Representatives, as well as the rule
of the insular Senate. When a standing committee of
the House renders a report on a bill, the House will
set the date on which the bill is to be fully dis­
cussed (House rule XII,3). This is actually when
the discussion in Committee of the Whole may occur,
but the rules do not require that it necessarily be
so. The third reading may be a full reading but,
again, the House may decide that only the title be
read. In the case of Senate bills sent to the House
of Representatives, the Secretary of the House will
read the title of the bill or joint resolution
twice, "a menos que la segunda lectura se efectúe en su
totalidad" (rule XII,6); the House, and not the Com­
mittee of the Whole, is the one to decide whether the
reading will be in full, as is implied by rule XIII,2.
After the second reading, the Senate bill will be re­
ferred to the appropriate House committee, and the pro­
cedure thereon will be the same as in the case of House
bills. As has been already remarked, the insular Senate
follows the same procedure in considering House bills, House joint resolutions, and House concurrent resolutions as it does with its own joint and concurrent resolutions, and bills. Note that the House rules do not make adequate provisions for the procedure to be followed in the case of Senate resolutions and Senate concurrent resolutions.

Joint rules are particularly important in this subject because of the help they can afford in smoothing the path of cooperation between the two chambers of the legislature and in facilitating the work of joint committees. The caucus system may greatly profit also by a uniform procedure in the two houses. Often— when the two chambers are controlled by different parties, or when the control is exercised by one party, but the margin of majority is small—action on the floor has to be planned along different lines, dictated by the difference in rules. It will greatly simplify matters to have just one set of rules to be kept in mind. It is an a fortiori case when a single party dominates both chambers of the legislature by an overwhelming majority. The only concern of the Legislature should then be uncompromising efficiency, balanced, of
course, by a regard for minority rights. How does a double set of rules aid efficiency or, for that matter, help in safeguarding the rights of the minority? Double rules are usually the product of historical error or of the pressure of different political factors operating in the two chambers of a legislature. If the former, why perpetuate it? if the latter, why should we labor under the procedural compromises of past generations? It is true that a number of more or less stable rules may be desirable to assure the legislative process some degree of homogeneity, even though one legislature cannot force its rules upon the other. It should be in fact the duty of a legislature carefully to preserve the basic outlines of law-making that its predecessors may have considered essential to democratic processes, if it so considers them. It should, however, be the duty of such a legislature to do away with what political formulas may have been incorporated into a set of rules in answer to situations already irrelevant, whenever those formulas cannot effectively further the program of the new body. The rules should not shape the program, but the program the rules. Every recent-
ly elected legislature should give thought to the way in which it should, within a pattern of democracy, so shape its rules as to make sure that the will of the majority is not thwarted. It has been the fortune of recent Puerto Rican legislatures to work with rules affording relatively little opportunity, to my mind, for delay and obstruction, so that there has been no reason for a revolutionary revision of the rules. The main purpose of a set of rules for law-making—that the majority may have its way, without impairing the rights of the minority—is relatively well-served by these rules. Criticism by the minority is not allowed easily to bloom into successful obstruction, as was the case in the federal House of Representatives before the 1890 and 1911 procedural revolutions, and as is the case to a large extent today in the national Senate. But the doing away with great opportunities for dilatory and obstructionist practices does not constitute the whole problem. Even when such minority tactics do not constitute a menace, there is the menace of a majority sacrificing speed and efficiency because of a number of possibly inadequate rules.
2. **Priority of bills.**

In contrast to the United States House of Representatives, few state legislatures have given due consideration in their rules to the problem of priority of bills. There are few provisions in their rules for the segregation of public from private bills, and for the giving of priority to the former. Although such agencies as the caucus and the standing committees may see to it that important bills of general interest be given preferential treatment, it is perhaps preferable to make specific provision to this effect in the rules. This may be done through a rule that bills of general interest should have priority over private bills, or through the setting up of a system of calendars for public and private bills. This is to be recommended especially in cases where the legislative session is of every limited duration. Note that the insular Senate rules, in contrast with the insular House rules, do provide some machinery to grant priority to some bills, through a special calendar of highly privileged matters (rule XI, 3). The House simply states that any question of priority of measures shall be decided by a majority—presumably, of the members present—without debate (rule XXII).
3. **The Committee of the Whole.**

The Committee of the Whole, as used in the United States House of Representatives, is an ingenious device to expedite legislative work and avoid some irksome constitutional provisions. The institution, however, was born under quite different circumstances than those prompting its use today. The idea for a Committee of the Whole arose in England during the reign of James I and was a powerful instrument in the fight that the House of Commons waged for independence from the Crown. To avoid spying by the Crown, who selected the speaker, the House often met secretly, with a chairman elected by its own members. All the important legislative agreements were reached in those secret meetings and were ratified without discussion in the formal meetings. As used in the United States House of Representatives, which adopted a system of committees of the whole as far back as 1789, the institution has developed into a method for carrying out most of the discussion of bills. The practical advantages of such a procedure, as followed by the federal lower chamber, are: the ability to transact business with less than the quorum required by the Constitution (under House rule XXIII,2, one hundred, of the four
hundred and thirty-five members of the House, can do business constituted as Committee of the Whole House or of the Whole House on the State of the Union; the avoidance of time-consuming record votes, also required by the Constitution if one-fifth of the members present demand such a vote; and the limitation of the time of debate on any amendment to five minutes for any member, once general debate is closed by order of the House (rule XXIII, 5). The House of Representatives has two kinds of committees of the whole. The House goes into Committee of the Whole House on the State of the Union to consider bills chiefly concerned with the raising or expenditure of public funds; bills of a non-financial nature, on the other hand, are discussed by the Committee of the Whole House.

The insular House of Representatives provides for a single committee of the whole, a more rational procedure than having two. The Speaker of the House shall be the chairman of the committee (rule XVII, 2). The Federal House rules, in spite of criticism to the effect, still keep the provision found in the original English institution as to the Speaker vacating his chair; the chairman, however, is appointed by the Speaker (rule
XXIII, 1). Our Senate can also resolve into Committee of the Whole (rule XVIII), the chairman of which shall be the President of the Senate or a senator appointed by him. The flexibility of the latter rule has the advantages of the insular house rule, and at the same time provides the President of the Senate with a breathing spell in case other urgent duties demand his immediate attention.

In the Committee of the Whole House and the Committee of the Whole Senate of the Legislature of Puerto Rico, the House and Senate rules, respectively, will govern, as far as applicable, the proceedings. The Speaker has unlimited rights to regulate debate. It is up to him to determine how many representatives may speak concerning a given measure, and the time allotted to each (House rule XIV, 5). He can stop debate whenever he deems that a bill has been sufficiently discussed. The Speaker does not have such a tremendous power to regulate debate before the full House. The discussion is on such occasions regulated by the time limits fixed in rule XIII, 2, which provides that no member shall speak more than twice on the same measure, the first time for ten minutes and the second, from
five to twenty minutes, depending on whether other representatives are willing to yield him their time.

The House, however, may, by unanimous consent, provide for unlimited debate on certain occasions. The rules of the Puerto Rican Senate specify that the majority may, once the Senate resolves into Committee of the Whole, fix the time limits for debate; no Senator may speak more than thirty minutes (rule XV,4). No provision is made as to the number of times a Senator may speak on a given measure, unless we apply rule XV,2, as was probably intended, but which actually applies only to debate before the Senate. Rule XV,2, states that no senator shall speak more than twice on the same measure, for ten minutes each time, unless the Senate shall otherwise determine.

The insular House rules provide that no record votes may be taken in Committee of the Whole. Such a provision is lacking in the Senate rules. Section 34 of the Organic Act of Puerto Rico, it should be remembered, states that a yea-and-nay vote on any measure must be taken, if requested by one-fifth of the members present.

No special provision for a quorum lower than the majority of the representatives and of the senators sworn in is found in either the House or the Senate rules
concerning the committee of the whole of each house.

In view of the small membership of the two chambers, a provision to the contrary seems unwise.

To sum up, what are the advantages to us of providing for committees of the whole in our legislative process? Of the three modern reasons for adoption of that device, limitation of debate, reduction of quorum requirements, and avoidance of record votes, the first we have, anyway, in our rules as to general debate, and the second, we do not need. Only the third is left, and there is no present fear that a minority may succeed in obstructing the legislative machine through abuse of record votes. 57

Our legislature, moreover, is a small body. The lack of fear of record votes is expressed by the very absence of a rule prohibiting them in Committee of the Whole proceedings in the Senate rules. If we look at the Senate rules, in fact, as they now stand, it is hard to find any vital reason why there should be a Committee...

57. Moreover, there is always the electrical call system, established in many states, which eliminates the main objection to record votes: the delay involved.
of the Whole in our upper chamber. Basically, Committees of the Whole are subterfuges. A fiction of that nature, however, is of real value to the United States House of Representatives because it actually allows the House to get around constitutional requirements that, mainly because of the size of the House, hinder work. It is submitted that the reasons, if any, calling for similar procedure in our legislative chambers do not carry enough weight. The institution of the Committee of the Whole should be abolished in Puerto Rico.

B. SOME PARLIAMENTARY MOTIONS

The general rules of the insular House and of the Senate on limitation of debate (House rule XIII, 2; Senate rule XXV, 2) apply to the debate of motions.

Any proposal made by a member, outside of the introduction of a bill or a joint resolution, constitutes a motion, according to House rule XIII, 6. Note that, technically, resolutions, concurrent resolutions, and memorials fall within this definition, which is not the case in Senate procedure (rule XX, 1). All motions must be seconded, in both the Senate and the House (Senate rule XX, 2, 9; House rule XIII, 7), a survival of old procedure that usually entails a waste of time. The
federal House of Representatives used to have such a requirement in its rules, but it was abolished in 1880. As to some motions, there is still the requirement that the support of a number of members must first be got before the motion may be considered. No seconding of motions is required in the United States Senate.

Immediately upon being seconded, the motion shall be put before the House (insular House rule XIII, 9). The same rule obtains in the insular Senate, except that the rule provides that the Senate may rule to postpone consideration of the motion until a later date (rule XX, 6). The same result may be reached, in my opinion, in the House, through a motion to postpone until a day certain.

While a matter is being discussed, no motions may be entertained by our House of Representatives outside of the following: a motion to adjourn, a motion to lay on the table, the previous question, a motion to postpone, a motion to postpone until a day certain, a motion to refer to a committee, or a motion to amend. The order mentioned is also the order of preference of these motions. No debate may be had on the first three
of these motions (House rule XIII, 15). A similar provision is found in the Senate rules (rule XX, 12), except that the order of preference is altered in some cases. The motion to recess, absent from House rule XIII, 15, is given the number two place in Senate rule XX, 12. 58

1. The previous question.

As stated in Jefferson's Manual of Parliamentary Practice, the previous question, a motion intended to cut short all further debate, is believed to have been introduced in England in 1604. 59 Its history has been long and useful. House rule XIV and Senate rule XXI incorporate this device into our legislative system.

House rule XIV declares that any Representative may put the previous question before the House and, if there be a quorum and the motion be favored by the majority — presumably the majority of the members present — all debate on the matter under discussion shall immediately come to an end and the matter shall be then voted upon.

58. The federal House of Representatives goes much further in forbidding debate on motions. See the large list of non-debatable motions in Cannon's Procedure in the House of Representatives, p. 90.

The previous question may be put in respect to a motion or series of motions, or on an amendment or amendments, as well as regarding a whole bill, at any stage of its consideration. Senate rule XXI contains, in more general terms, the same principles. No debate on the previous question is permitted in either house. Senate rule XXI, 1, further specifies that the previous question cannot be put when the Senate has resolved into Committee of the Whole. A rule to that effect may be implied from House rule XVII, 4, which establishes that the only proposal that may be made in Committee of the Whole is the motion to amend.

2. The question of no quorum.

Until 1890, quorum in the national House of Representatives was determined by the number of members voting on a given measure. The breaking of quorum under this rule was then an easy matter for minorities which wanted to engage in dilatory practices; what they simply had to do was not to vote. Speaker Reed changed this in 1890 when he ruled that members present, but not voting, were to be counted for the purposes of determining whether there was a quorum. Such a wise rule prevails in the
House of Representatives in Puerto Rico (rule XVIII, 4). The Senate rules do not include an equivalent provision, a situation that should be remedied, even though a custom to the same effect may prevail in the Senate. One of the main purposes, in fact, of a revision of the rules should be, in many cases, to crystallize custom into rule, where custom, for a good end, has run ahead of enactment. This results in benefits to new members, who can thus be more easily trained, and to the public in general, when seeking information on the legislative process.

3. **The motion to adjourn.**

This motion enables a legislative body to determine at any moment whether it wants to act or not on a given matter. Although, therefore, it is hard to spring a surprise on the legislature, the motion may still be used for obstructionist purposes. The chief safeguard against this is the rule prohibiting any debate on this motion which, as it has already been seen, we have in Puerto Rico. A second preventive measure - which we do not, but should, have - is to accord the presiding officer of each house the power to refuse to entertain dilatory motions. As has also been seen, the motion to adjourn is the one ac-
corded the highest privilege by the Legislature of Puerto Rico. In both the House and the Senate, the motion to adjourn may be made at any time, except when voting is in effect and until the results are known, when a member is speaking before the house, or when the previous question is pending (House rule XXVI; Senate rule XXXVI). The House rules contain the further limitation that if a motion to adjourn is once rejected, it may not be made again until a new matter turns up for consideration.

4. Points of order.

The insular Senate and House rules on points of order differ to some extent. Senate rule XIII specifies that points of order - questions on the interpretation of the rules - must be submitted to the President of the Senate, who shall decide them within forty-eight hours after submission. The right to appeal to the Senate is also provided. House rule III, 6, also establishes that points of order shall be decided by the Speaker, an appeal from whose decision can be taken to the House. The rule does not specify when the point of order is to be decided. This House rule, however, contains an
additional provision prohibiting debate on points of order, except when the Speaker decides, for his own information, to allow one or more members to speak. On an appeal being taken to the House, the Speaker shall allow two members, one in favor and the other against, to speak for five minutes on the matter. No provision as to debate, allowing or forbidding it, is met in the Senate rules.

5. The motion to amend.

Only a few aspects of this motion need be discussed. An amendment which is not directly related to the measure under discussion, or an amendment that varies the purpose of the proposed bill, is not admissible in either our House or Senate. The House and the Senate shall each be the judge of whether this rule has been violated. No debate may be had on the absence or presence of such a violation. While a measure is under discussion, an amendment to the same may be proposed, as well as an amendment to the amendment (House rule XVI, 3; Senate rule XVII, 4). No more motions to amend may be made while these are pending. This constitutes a simplification of the federal House procedure, under which four motions to amend may be pending at the same time: a motion
to amend, another to amend the amendment, another to present a substitute amendment, and still another to amend the substitute amendment (House rule XIX).

In the insular Senate, the motion to amend the title of a bill or a joint resolution may only be made after the bill or resolution has been passed (rule XVII, 9). In the House, this motion may be made after the second reading of a bill; the motion is not debatable (House rule XVI, 6). A bill in its third reading may not be amended under Senate rules unless an absolute majority of the Senate agree to such procedure (rule XVII, 10). This provision is absent from the House rules. Such a difference between House and Senate procedure is brought about by the difference in Committee of the Whole procedure.

6. The motion to strike out the enacting clause.

The motion to strike out the enacting clause - a motion that, of course, amounts to a motion to defeat the bill - is recognized by both the insular House and Senate rules (House rule XVI, 8; Senate rule XVII, 13). It is considered to be, in both sets of rules, in the nature of an amendment, which certainly it is not. No
debate may be had on this motion. If carried, the
bill is thereby totally defeated. The motion is given
a privileged status in the Senate rules, in that it
has priority over any amendment to the bill under con-
sideration.

7. The motion to reconsider.

The motion to reconsider affords a legislative
body the opportunity immediately to correct an error
detected in a bill as passed. It is not a weapon for the
minority, as our rules specify that, when a record vote
is taken, only a member who voted with the majority may
make the motion to reconsider (House rule XV; Senate rule
XXIII, 2). The motion to reconsider must be made on the
same day that the matter to be reconsidered was passed
or decided, or the next calendar day after that. The
House rules prohibit debate on this motion; 60 the
Senate rules are silent on this point. The Senate rules
provide that, if the motion to reconsider is made as

60. The federal House of Representatives has ruled a
motion to reconsider not debatable, if the motion
proposed to be reconsidered was not debatable.
House Manual, section 819.
regards a bill or resolution that has been already referred to the House of Representatives or to the Governor, the motion may only be carried by an absolute majority of the Senate. As nothing is said in the House rules on this matter, it is to be supposed that a majority of the members present is sufficient to carry the motion in these cases.

The possible usefulness of the motion to reconsider is often nullified in the federal House of Representatives by the practice of the members in charge of a bill of making the motion to reconsider immediately upon passage of the bill, and then following it up with a motion to lay on the table. If the latter motion is carried, the motion to reconsider may not again be made, as the federal rules have been interpreted only to allow a single motion to reconsider to be presented. This practice should be prohibited in our rules.

This motion should be accorded a highly privileged status in our rules. The federal House of Representatives gives it precedence over all matters, except the motion to adjourn and conference reports (rule XVIII).


There are two types of motions to suspend the rules
in the federal House of Representatives: the motion to suspend the rules and the motion "to suspend the rule and pass" a given bill. The latter motion actually provides an additional procedure for calling up a bill. Its importance has diminished with the rise of the Committee on Rules. Only on certain days can the motion be made (see rule XXVII) and, to be carried, two-thirds of the members voting, a quorum being present, must favor the motion. The motion to suspend the rules, however, is always in order; unanimous consent is required. This is one of the motions that must be seconded.

The rules of the insular House of Representatives provide that no House rule may be suspended, unless the motion so to do be announced one day in advance (rule XXXIII, 3). The Senate rules contain a similar provision, it being further required that the motion be in writing and that it specify the rule or rules that are to be suspended, and the reason for so proposing (rule XLI, 1).

A House rule may not be suspended without the consent of an absolute majority of the members; unanimous consent is needed to suspend a Senate rule. Note that the Senate may suspend at any time even the requirements that the motion be announced one day in advance and that it be in writing; *quaere*, whether this may be done under House rule XXXIII,3, which apparently limits the time when the former requirements may be waived, to the last ten days of the legislative session.
CHAPTER VI

LEGISLATIVE DRAFTING

A. Bill drafting and judicial discretion.

Legislative drafting, in a good many jurisdictions, appears to be a field in which magic still plays an important part. An almost boundless fear of judicial gods makes the draftsman seek refuge in word-rituals and holy formulas. Laws have been written more for the judges than for the general public, the legislators, and the administrators of the law, and almost always with the idea of keeping judges within narrow bounds. Judges, however, have proved hard animals to cage, especially in countries where the doctrine of judicial supremacy obtains. Justice in concrete cases being a much respected value in our society, moreover, people have often wondered, even granting that judges could be caged, whether they should be so confined to too narrow grounds. Apart from considerations of what should be, the existence of great discretion in the adjudication of controversies and the balancing of interests is a fact that has been well pressed into the legal consciousness of our country.

The frank recognition of this fact has called for a revision of the field of the interpretation of statutes.
Few lawyers would today maintain that a formula such as *inclusio unio est exclusio alterius* does actually decide cases. Most would admit that considerations of public policy and the personal equation play a far more important role in the actual decision of cases and in the interpretation of statutes by the courts. The recognition of the fact that, in our community, the courts, to a greater extent than has been hitherto admitted, do legislate also calls for a revision of the field of legislative drafting.

The function of the courts in our specific type of society has not proved to be simply the automatic application of legislative commands to particular cases. Our courts have also served to clarify, complement, develop, concretize, and at times reverse, legislative policies, as well as to create new policies. It would be not only futile, but also harmful to a better balancing of interests for our legislature to try to formulate its policies in all detail to stand for all time. The ideal of perfect, all-inclusive constitutions and codes now seems quite out of human reach. Ordinary laws have also often proved to need, although to a lesser extent, the helping hand of courts, as well as of administrative agencies and tribunals. The trouble has been,
however, that the courts' hand often has not been a helping hand. The development of the due process clause in American constitutional history shows how often the Supreme Court has lagged far behind Congress in safeguarding important interests seeking recognition. The toughness of a taught tradition is pointed out as a factor calling for a lesser sensitivity of courts to subtle changes in the balance of interests and prevalent scheme of values in a community. This can hardly be elevated, however, to the category of a general rule. Judicial sensitivity to social change is definitely a variable. Courts are not necessarily agencies of stability alone; they have been as often agencies of social change. In common law jurisdictions, this latter aspect of the function of courts has become particularly evident.

The "sensitivity-quotient" of judges, sensitivity to changes in public opinion and the prevalent scheme of values, is certainly a factor to be reckoned with, together with the recognition of the wide area of judicial discretion, by legislative assemblies. Courts with a low sensitivity-quotient are less apt to feel the same pressures that the legislature feels; they tend to see the problem out of which grows the particular piece of legislation in a different light, often becoming guilty
of perverting and even annulling the legislative intent. One thing is clear, though. Purely verbal formulas will not prevent this. A deep policy conflict between court and legislature can hardly ever be pre-decided in favor of the legislative branch by the magic wording of a statute, although when a contemplated legislative act is of doubtful constitutionality, artful drafting may help to draw a favorable decision. Trying to keep the judge within narrow bounds in policy issues, while being mostly ineffective as respects conservative and reactionary courts, may indeed become an obstacle in the way of a more enlightened court's efforts to make a statute grow with the times.

A legislative draftsman, rather than writing in fear of judicial wrath, should therefore write with an eye to the forceful expression of the legislative policy in a way understandable, not only to legislators, judges, lawyers, administrators, and other public officials, but also to the common citizen. It is true that some standard formulas have been evolved, tested by a series of judicial decisions, to meet certain constitutional requirements or convey a special meaning. Intelligent

1. A step in this direction has been taken by A. F. Conard, in his article "New ways to write laws," 56 Yale Law Journal 438 (1947)
use of these formulas is of course indispensable. Words of art are also valuable in making the language of the statute more precise, although the line should be drawn between what constitutes a word of art, or professional short-cut, and what is nothing but unnecessary and confusing legal jargon. The main thing, therefore, is to produce a clear and appealing statement of the legislative command, set in simple, readable form. A series of do's and don'ts will, of course, have been established by judicial decisions which must be taken into consideration in the drafting of any bill.

Writing primarily for the judges, and in fear of the judges, has often made for illegibility of the laws and uncleanness of legislative purpose. Attempts to eliminate judicial discretion have, of course, failed. Judicial discretion has not only come here to stay, but it has been with us right from the beginning. It seems that the best course open to us is to try to make the best use of such judicial discretion; to enlist it in the cause of safeguarding and promoting the values represented by a given legislative command, as well as in the complementation, concretization, and development of legislative policies. Judicial discretion has also

2. If the Legislature of Puerto Rico, for example, wants to levy a tax it may not do so by joint resolution. Valiente v. Sancho, 50 DPR 586 (1936).
allowed for the thwarting and even cancelling of the legislative intent. But this possibility will always remain open, anyway. The remedy, if a remedy need there be in our tripartite governmental structure, does not seem to lie, as has been discussed, in craftier and craftier attempts to force courts to decide a given way.

The fact should be remembered that often, if not always, the constitutionality of a legislative act, the availability of a given way of doing things, is ultimately decided in the court of public opinion. 3

What follows is chiefly an account of legislative drafting problems and techniques in Puerto Rico as affected by decisions of our Supreme Court. More than a chapter on legislative drafting generally, it is a sketch of the extent to which decisions of the insular Supreme Court affect legislative drafting in Puerto Rico.

B. The Title.

Provisions as to titles began to appear in American state constitutions chiefly in the second half of

the nineteenth century. These provisions, which worked as limitations on the use of titles, had not existed in England, where titles originally were not used, nor do they exist now in the federal constitution. No such limitation on the power of the legislature to affix whatever caption it may deem appropriate to its enactments was known in Puerto Rico either prior to 1917. The Foraker Act, Puerto Rico's constitution from 1900 to 1917, was happily silent on the subject of titles. Those were blissful years for Puerto Rican legislators, when the ogre of unconstitutionality did not lurk behind every clause; titles of even long and complicated acts, as our Supreme Court has remarked, were then generally rendered by short, incisive titles. Then came the Jones Act, Puerto Rico's second Organic Act. Here Congress thought wise to include a provision as to titles similar to that found in some state constitutions.

4. V: 1 Sutherland, Statutes and Statutory Construction (3rd ed. by E.E. Horack, Jr.). s. 1701
5. 31 Stat. 77 (1900).
Paragraph 8 of section 34 of the Jones Act reads:

"No bill except general appropriation bills shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void, only as to so much thereof as shall not be expressed." There is nothing in this provision that would in itself justify a departure on the part of the legislature from its previous policy of simplicity in the drafting of titles. Yet such a departure was made, and a tendency toward long-windedness, following the belief that the title of an act should be an index of its contents, took hold of the legislature. Normally, such a change could be caused by the fear of strict interpretation of titles by the native courts. The Supreme Court of Puerto Rico, however, has adopted a consistently liberal view of paragraph 8 of section 34 of the Organic Act. There is no reason, it is submitted, why an ungrounded fear should be allowed to continue to impede the return to sobriety and directness so much needed in this field as the key to comprehension of legislative
enactments.

Let us again examine paragraph 8 of section 34. Two distinct constitutional requirements are imposed by it: a) That no bill, except general appropriation bills, shall contain more than one subject and, b) that the subject shall be clearly expressed in the title. What ends are supposedly served by these two provisions? The first requirement has been traditionally considered as a safeguard against "omnibus" legislation and the inclusion of "riders" in bills including other very desirable measures. The purpose of the second requirement is generally termed to be the giving of notice to the legislators and the public of the subject-matter of the act.

It is particularly questionable whether the decision about compliance with the second constitutional

8. The exception as to general appropriation bills was, of course, quite unnecessary. This concession to judicial common sense could have well been made.


10. In Pesado v. Warner, 279 U. S. 340, 343; 73 L. Ed. 729, 732 (1929), the Supreme Court of the United States said, in construing a similar provision of the Philippine Organic Act: "The purpose is to prevent the inclusion of incongruous and unrelated matters in the same measure and to guard against inadvertence, stealth, and fraud in legislation. When bills conform to such requirements, their titles serve conveniently to apprise legislators and the public of the subjects under consideration."
requirements should rest with the courts. The majority of courts, however, have refused to allow a legislature to be the sole judge whether its members have been misled by an inadequate title. Accordingly, most courts construe provisions similar to paragraph 8 of section 34 of the Organic Act of Puerto Rico, as mandatory. A few courts, however, construe both the constitutional requirements mentioned above as directory. 11 Puerto Rico follows the majority rule. 12

As interesting problem arises out of the use of the word "bill", instead of "act", in paragraph 8 of section 34. Does this mean that the constitutional requirements imposed by paragraph 8 apply only to legislation during the enacting period? It has been so held.
Puerto Rico again sides with the majority in assuming that "bill" and "act" are synonymous terms in this instance.

Is the word "bill", as used in paragraph 8 of section 34, also be deemed to include joint resolutions and concurrent resolutions? Does paragraph 8 apply to joint and concurrent resolutions? There are no cases raising this point. It would appear that concurrent resolutions, as well as simple resolutions, not being generally classified as "law", do not come within the purview of the above constitutional provisions. It can hardly be expected that courts will venture to exercise control over the administrative affairs of a legislature and its expression of legislative opinions through concurrent resolutions and simple resolutions. In jurisdictions where joint resolutions are almost equivalent to statutes as to the matters which they may contain, courts may


14. The argument of Bing v. Weber, supra, has actually never been pressed before the Supreme Court of Puerto Rico. A restrictive interpretation of the word "bill", as it appears in paragraph 8 of section 34, would be an easy way out if ever the Supreme Court determines that enforcement of the constitutional provisions of that paragraph should be left to the legislature.
reasonably be expected to apply constitutional limitations as to titles both to bills and joint resolutions, if the purposes in setting up those limitations are to be served at all. In other jurisdictions where the use of the joint resolution is greatly limited, bringing it closer to concurrent resolutions than to bills, it seems indicated for a court to refuse to extend the constitutional limitations to joint resolutions. Puerto Rico follows the latter approach to joint resolutions, 14a

A decidedly liberal trend is followed by the Supreme Court of Puerto Rico in the interpretation of paragraph 8 of section 34. Let us first examine its position as to the requirement that the subject of a bill must be clearly expressed in its title.

In an early case, Rodríguez v. Porto Rico Railway Light and Power Co., 15 the court stated: "Examining the content of the Act, we find that the title is sufficient. It indicates, or is a 'sign post,' as one of the decisions says, of what the Act contains. It is not necessary that

15. 30 P. R. R. 869, 870 (1922).
the title should tell in a general way what the purpose of the Act is." The "signpost test" has since been consistently followed. 16 In Rivera v. Corte, 17 the validity of an act "To provide revenues for the People of Puerto Rico through the levying of a certain additional income tax, which shall be known as 'The Victory Tax'; to appropriate funds for the administration of this act, and for other purposes" 18, was attacked because the above title did not indicate the minimum gross income upon which the tax was levied, as well as certain exemptions specified in the body of the Act. The title was held to be sufficient, 19 paragraph 8 of section 34 not requiring that a title be an index of the contents of an act.

17. 62 P. R. R. 513 (1943).
18. Act #29, approved December 7, 1942.
19. The court said: (no official printed translation is available): "Admitimos que este título dista mucho de ser un modelo de perfección, pero creemos que al informar que el propósito de la ley es imponer 'cierta contribución adicional sobre ingresos', el hecho de que deje de especificar que se imponen sobre determinados ingresos brutos, o de expresar las excepciones contenidas en la ley, no lo hace legalmente insuficiente . . . El hecho de que no se especifique en el título la clase de ingresos a la cual se impone la contribución no hace nula la ley. Hubiera sido mejor y más claro dicho título si así se hubiera hecho, pero la forma en que está redactado informa claramente que es
In Gobierno de la Capital v. Consejo Ejecutivo, the court actually went out of its way to condemn the practice of writing titles as long as the laws themselves. A municipality of Puerto Rico sought in this case a declaratory judgment on the validity of a law that authorized the transfer without adequate compensation to an insular agency of an aqueduct service belonging to petitioner. The municipality contended, among other things, that the title of the law in question violated paragraph 8 of section 34 because, although the title stated in part that the municipalities would be compensated for the taking away of their aqueduct services, the body of the act did not include provisions for adequate compensation. The Supreme Court of Puerto Rico held that petitioner had no standing to attack Act #39 because, being a political
subdivision of the insular government, it suffered no
damage by reason of its enactment. Although, therefore,
it was unnecessary to enter into petitioner's argument
as to the invalidity of the title, the Court decided to
sound here a definite note of warning to the legislature
as to its policy of long-windedness and its belief that a title
should contain a minute description of the provisions in­
cluded in the body of the act. The Court stated:

"In recent years there has been a tendency
on the part of our Legislature to provide titles
for its enactments which, in the words of the
appellees, are 'stated in such extreme detail as
to put them almost in a class by themselves'.
These titles are frequently almost as long as
the statutes themselves, and undertake to de­
scribe and even to summarize the contents of
each section of the Acts involved. Undoubtedly
such meticulously detailed titles have the lau­
dable purpose of compliance with section 34,
paragraph 8, of the Organic Act. But Congress
never intended that a legislator need look no
further than the title of a statute to determine
its contents. A title is not a substitute for a
statute; it serves only as a guideline to lead one
into the statute itself, where one is expected
to find its detailed provisions. Once the 'sub­
ject' of a bill has been 'clearly expressed in
its title', the function of the title is exhausted.
Earlier legislatures understood this. Our sta­
tute books are full of long and complicated acts
the titles of which are simple and straightforward,
consisting of three or four lines of text.
These statutes have either never been assailed in
the courts, or have been upheld as containing a
subject which is clearly expressed in the title
(See Rivera v. District Court, 62 P.R.R. 518, 544,
545).
But--and here we come to the heart of the matter--when the Legislature, for reasons of its own not strictly required by the provisions of the Organic Act, chooses to summarize the contents of an Act in its title rather than simply to express therein its subject, it runs the risk that such a summary will be so inaccurate that it will be substantially misleading as to material portions of the Act. That is exactly the situation we are faced with in this case. If the title of Act No. 39--which is appended in the margin as an example of unnecessary prolixity in the title of a statute--had simply failed to mention the issue of compensation, we might conceivably have held, following Rivera v. District Court, supra, that the subject of the Act had nevertheless been expressed in the title and that its failure to mention compensation was not necessarily fatal. But the Legislature did undertake to describe in the title the compensation the Act provided. Having chosen to write a detailed title, the Legislature must make certain that such detailed information is not misleading in the manner indicated.

However, in the particular case before us, we never reach the question of whether the title of Act No. 39 is sufficiently misleading to render the Act invalid under this test. We are stopped short in our examination thereof for the simple reason that The Capital has no standing to raise this question. As we recently phrased it, 'the constitutionality of a statute can not be challenged unless the person who attacks it shows that said statute deprives him of rights protected by the Constitution' (College of Pharmacists v. Board of Pharmacy, 60 P.R.R. 789, 797).

This is a very strong warning indeed. Not only can the subject of long and complex laws be constitutionally expressed in short, incisive titles but to try to do otherwise may entail a great danger of failing to comply with
the provisions of paragraph 8 of section 34.

 Gobierno de la Capital v. Consejo Ejecutivo, supra, exercised a beneficent influence in the drafting of a few, very few, important laws in the 1945 and 1946 ordinary sessions of the Legislature of Puerto Rico.  

Most of the important laws, however, continued to have incredibly long and confusing titles.  

Let us examine a few of the prevalent beliefs among insular draftsmen which tend to cause the situation denounced in Gobierno de la Capital v. Consejo Ejecutivo 63 D.P.R. 434 (1944). First, it is widely believed that,

22. Act #40, approved May 1, 1945, sixteen pages long, and creating one of the most important insular agencies, has the following title: "Creating the Puerto Rico Aqueduct and Sewer Service; defining its status, powers, and duties and providing for transfer thereto and ownership, possession, operation, and development thereby, of all the public aqueduct and sewer systems of Puerto Rico; to appropriate funds therefore, and for other purposes." See also Act #130, approved May 8, 1945, creating the Puerto Rico Labor Relations Board, and Act #279, approved April 5, 1946, regulating the use of motor vehicles in Puerto Rico.

23. See act #31, approved April 28, 1945 (creating the Puerto Rico Agricultural Company); act #272, approved May 15, 1945 (giving additional powers to the Development Bank of Puerto Rico); Act #212, approved April 5, 1945 (establishing hurricane insurance for coffee). A total disregard of the opinion in Gobierno de la Capital v. Consejo Ejecutivo, 63 D.P.R. 434 (1944), is again evidenced by an important administration bill, S.B. 932, filed on March 21, 1947, reorganizing the insular courts.
when amending an act, the title of the amended act must be copied in full in the title of the amendatory law. This often makes for unusually long titles. The question has not yet come before the Supreme Court of Puerto Rico. The overwhelming weight of authority, however, is to the effect that the title of an act to be amended need not be copied in full in the amendatory legislation. Only in Indiana must the title of the amendatory act quote in full the title of the amended act. It is submitted that the majority rule should be followed in Puerto Rico; it would be sufficient, to comply with the provisions of paragraph 8 of section 34, simply to cite in the title of the amendatory act the number and date of approval of the amended act. It may also at times be found convenient to add a brief description of the subject-matter dealt with in the amendment. This is not, however, a constitutional require-

24. See Act #29, approved April 20, 1945 and Act #452, approved April 25, 1946.
25. 1 Sutherland, Statutes and Statutory Construction, sections 1908-1909.
ment in Puerto Rico. It is well-settled in Puerto Rico that the title of an act amending a code need normally contain no more than a reference to the code section which is being amended, without need of further describing the subject of the amendatory act. The liberality prevalent in the decision of these questions may be noted from the existence in some jurisdictions of rules such as the one that if the subject-matter of the amendatory act is clearly comprehended within the subject-matter of the amended act, and the title of the amended act is sufficient, no inquiry will be made as to the sufficiency of the title of the amendatory act. Some courts, too, consider that even a section not mentioned in the title could be amended.

An important limitation to the general principle is illustrated by Laboy v. Corp. Amucarrera. This case involved an attack on the constitutionality of an

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28. So far as codes are concerned, the majority rule is actually followed. V.: Garcia v. Municipio, 57 D.P.R. 532 (1940). There are no decisions dealing with this question as respects other types of laws, but there is no reason why a different result should be reached there.


32. 65 D.P.R. 422 (1945).
amendment to section 553 of the Penal Code of Puerto Rico. Section 553 of the Penal Code specified that certain establishments should close on Sunday after twelve o'clock noon. Prior to the amendatory act the validity of which was attacked in this case, section 553 was amended several times, generally using the following title: "An Act to amend section 553 of the Penal Code." These earlier acts generally amended the provisions dealing with the time during which the commercial and industrial establishments covered by section 553 were supposed to remain closed. In 1917, section 553 was again amended. The title of this amendatory act was similar to that of the earlier acts: "An Act to amend section 553 of the Penal Code, repeal section 554 of said code, and for other purposes." This latter act, however, contained an entirely new provision, to the sense that "employees and clerks of enterprises and establishments not exempted by this act, and who

33. V.: Act #26, approved November 23, 1917.
34. Approved on March 1, 1902. Section 553 of the Penal Code was originally section 1 of an act, approved Feb. 10, 1902, bearing the following title: "An act providing for the closing of certain commercial and industrial establishments on Sunday after twelve o'clock noon, and fixing penalties for infractions of the provisions thereof."
35. V.: Act #57, approved March 13, 1913; Act #131 of Aug. 9, 1913; and act #24 of March 28, 1914.
36. V.: Act #20 of November 23, 1917.
render services on the basis of an annual, monthly or weekly salary, or in any form other than for wages or piece work at a fixed price, shall be entitled to one day of rest for every six days of work, at full salary." 37 Plaintiffs in this case sued under the above provision for wages owed them for having worked the seventh day without compensation for a large number of years. The Supreme Court found for the defendants on the ground that the title of the 1917 law did not comply with the requirements of section 34, paragraph 8, of the Organic Act. The Court stated:

"Since the amendments introduced to section 553 of the Penal Code in 1913 and 1914 were germane to the original subject matter of said Section, the title of said acts complied with the requirements of section 34 of the Organic Act. Upon construing constitutional provisions similar to that contained in section 34 of our Organic Act, it has been held that provided the amendatory matter is germane to the subject expressed in the original act, a title like that of the Acts of 1913 and 1914, complies with the constitutional requirement. A contrariwise sense, if the amendment in clearly incongruent with, or constitutes a complete change in, the subject of the original act, a title like the one quoted would, under these circumstances, violate the constitutional provision (cit.)....It is worthy of note that section 3....is clearly incongruous with the original subject of section 553 of the Penal Code. Evidently the matter contained in section 3 is of a civil nature and whoever reads the title of Act #26 of November 23, 1917, will hardly suspect that

37. Section 3 of Act No. 26 of November 23, 1917.
a purely civil matter has been inserted in the provisions of the Penal Code. The title of the Act of 1917 does not suggest in any manner whatsoever that the amendment introduced purported to compel an employer to grant his employee one day of rest for every six days of work at full salary."

On which of the two requirements established by section 34, paragraph 8, of the Organic Act does the decision in *Laboy v. Corp. Azucarera*, 65 D.P.R. 422 (1945), rest? Although the talk about the necessity that the subject matter of the amendatory act be germane to the subject matter of the original act may at first glance appear to refer to the provision that a bill shall not contain more than one subject, the holding is clearly to the sense that the 1917 act failed because its subject was not clearly expressed in the title. The *Laboy* case thus stands for the proposition that in order to amend a section of a code by mere reference to the section number, the subject matter of the amendatory act must be germane to the subject matter of the original section. A distinction must be made in this respect between the "germaneness" necessary to allow a code to be amended by reference to the section number only (in the case of a regular law, the section number plus the number and date of approval of the act) and the "germaneness" between two subjects that
would prevent the failure of an act because of its containing more than one subject. Thus, two subjects that have been termed incongruous by a court trying to determine whether such a title as the one involved in the Laboy case clearly expresses the subject matter of an act, may still not be incongruous if the constitutional provision involved is not the requirement that the subject of an act be clearly expressed in its title, but the requirement that an act shall not contain more than one subject. Care must be taken, it is submitted, to distinguish between these two meanings of "incongruous" and not to consider as applying to questions of duality of subject-matter determinations of incongruity in situations like the Laboy case.

The Laboy case purports to follow Benedicto v. Porto Rican American Tobacco Co. The title of the amendatory act in this case read: "An act to amend an act entitled 'An Act to protect Porto Rican cigars from fraudulent misrepresentation, by providing for adequate expert inspection, and the issue of stamps of guarantee covering the origin of tobacco used in the manufacture of such cigars, intended for exportation, and for other purposes',
approved March 11, 1915. The original act provided, among other things, that no charge was to be made for guarantee stamps. The amendatory act changed this by imposing charges for the guarantee stamps. No attempt to amend the title of the original act was made. The Circuit Court of Appeals for the First Circuit held that this amendment made the original act, not only an inspection law but also a revenue law, and that the fact that it became a revenue law was not clearly expressed in the title. The Court then proceeded to declare the amendatory act invalid only as to the revenue features discussed above. The Court also found the amendatory act invalid on the ground that it contained more than one subject, although the suspicion creeps in, on reading the opinion, that the finding was due to sheer confusion between the two constitutional provisions as to a clear title and a single subject.

39. In this respect the Benedicto case is contrary to the general trend of decisions holding that the effect of an unclear title is total unconstitutionality of the act. V.: Sutherland, Statutes and Statutory Construction, section 1708.

40. Compare: Domenech v. Porto Rican Leaf Tobacco Co., 50 F. (2d.) 779 (1931). In determining the weight of the Laboy, Benedicto, and Domenech decisions in the field of statutory interpretation, the peculiar questions of public policy involved should be given due consideration.
If the original act to be amended has been previously amended, how should the amended act be identified in the title of the amendatory act? Legislative practice in Puerto Rico is to refer to the original act "as amended." The "original act" theory, as opposed to Indiana's "replacement" theory, which requires that the reference be to the last amendment suffered by the original act, represents the orthodox practice of American Legislatures. \[41\]

In states following the "original act" theory, the phrase "as amended" seems, at first glance, to be mere surplusage. The phrase "as amended", however serves the useful purpose of pointing out to the fact that the original act has been amended previously. In the body of the act, reference to the last amendment to the original act must, of course, be made.

If an act contains an emergency clause, should the fact that it constitutes emergency legislation and that therefore it will come into effect immediately after its approval be expressed in the title? Some laws in Puerto Rico do refer in their title \[42\] to the inclusion of an emergency

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\[41\] 1 Sutherland, Statutes and Statutory Construction, section 1910.
\[42\] V. Act #291, approved April 9, 1946.
clause, although the general legislative practice in Puerto Rico is to the contrary. It is submitted that our legislative practice should be uniform to the sense of excluding from the title any reference to the emergency clause. The overwhelming weight of authority favors the latter practice. 43

The retroactivity of a law need not be expressed in the title either. 44 Neither have the penal provisions of a statute to be described in its title; it is not even necessary to indicate in the title of an act that it does contain any penal provisions at all, or that a new crime is being created by the legislature, as is sometimes mistakenly believed. 45 A title need do no more than point out the general subject of the act; reference must be made to the body of the act to determine which are the administrative provisions and other details used to implement the general subject.

43. Ex parte Maginnis, 162 Cal. 200, 121 Pac. 723 (1912); Hill v. Taylor, 264 Ky. 708, 95 S. W. (2d) 566 (1936); Central Hureka v. Gallardo, 39 P. R. R. 311 (1929).
44. Pueblo v. Telephone Co., 40 D. P. R. 566 (1930); Taboada v. Rivera, 31 D. P. R. 263 (1937); Pueblo v. Del Valle, 60 D. P. R. 184 (1942).
The omission from the title of exceptions, exemptions, and provisos is also not only a very safe practice, but a most reasonable one, if the subject of an act is to be clearly and concisely expressed. 46 No need appears, either, of including in the title a recital of all the laws, or parts of laws, being repealed, which is nothing but a repetition of the matter contained in the repealing clause. 46a

In only one other case besides Laboy v. Corp. Azucarrera, 65 D. P. R. 422 (1945), has the Supreme Court of Puerto Rico found a law fatally defective because of the fact that its title did not clearly express the subject of the Act. In that case, Rodriguez v. District Court, 47 an act creating a district court was involved, 48 the title of which expressed that certain municipalities were being segregated from certain judicial districts and that a new district court was being created. The body of the act incorporated, however, only a few of the segregated municipalities into the new judicial district, actually

47. 60 D. P. R. 894 (1942).
48. Act #250, approved May 13, 1942.
specifying that three of them were not to be segregated at all. The court said:

If we stop to examine the above-transcribed constitutional provision (paragraph 8 of section 34), we will notice that it requires that the subject of an act must be clearly expressed in its title, and that although it makes the exception that if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed, however, it does not make the same exception where, as happens in the present case, the text of the act is clearly in conflict with the wording of the title... We should not be understood as holding that the title must contain a minute description of the act. It is sufficient if it expresses in a general way what is the purpose thereof, Rodriguez v. P. R. Light & Power Co., 30 P. R. R. 869, provided, of course, that it does not lead to error. As graphically stated in the case last-above cited, the title must be a 'signpost' of what the act contains.... It will be sufficient to juxtapose the title of the act with sections 1 and 2.... In order to immediately observe that the former is far from being a 'signpost' of the contents of the act, and that on the contrary the title is in open conflict with the contents of both the aforesaid sections... It should be noted that this is not the case of an act containing a subject which is not expressed in the title. There is involved here a most serious violation of the constitutional provision which may produce deceit, stealth, or fraud, by expressing one thing in the title and stating the contrary in the body of the act. 49

Rodríguez v. District Court, 60 D.P.R. 894 (1942), and
Gobierno de la Capital v. Consejo Ejecutivo, 63 D.P.R.

434 (1944), reflect the liberal disposition of the Supreme Court of Puerto Rico to uphold legislation attacked under section 34, paragraph 8, of the Organic Act, except in cases of direct contradiction between the title and the body of the act, and cases where the legislature unwisely attempts to make the title an index of the contents of an act and fails to make a complete index.

Similar liberality is evidenced by the insular cases dealing with the provision of paragraph 8 of section 34 to the effect that no bill shall contain more than one subject. There is not a single case holding an act, or part of an act, void because of failure to comply with that provision. All provisions of acts attacked have been found to be germane to the general subject of each act. In view of the purposes of that constitutional provision, nothing but the conviction that an attempt is being made at "omnibus" legislation (the practice of having unrelated matters passed in one act.

through the polled votes of the proponents of separate measures which alone would not have secured a majority of votes) or that "riders", which would not have passed either as separate measures, are being attached to popular legislation should move a court to invalidate an act because of its containing more than one subject.

People v. Martínez presents an interesting problem. The defendant was convicted of keeping an offering for sale adulterated milk under an act titled "An Act providing punishment for the adulteration of milk, and for other purposes." The defendant contended that the act was unconstitutional both because it contained more than one subject and because the keeping or offering of adulterated milk for sale was not clearly expressed in the title. The court held the act constitutional. The opinion, as is often the case in the construction of paragraph 8, section 34, of the Organic Act, does not distinguish clearly between the requirement that a bill shall contain no more than one subject and the requirement

51. We do not enter into the question whether it is proper that the courts should constitute themselves into the keepers of the legislative conscience in this respect.
52. 40 P. R. R. 385 (1930), 46 F. (2d) 427 (1931).
The court said:

"The offense of keeping adulterated milk for sale or of offering it for sale, is closely allied to the offense of adulteration itself. The purpose of all penal legislation is to provide a deterrent to the commission of crime rather than to punish the individual offender. The purpose of the law 'providing punishment for the adulteration of milk' is to discourage such adulteration, not to inflict suffering upon persons guilty of that act....Technically the sale of adulterated milk, or the keeping or offering of such milk for sale is a separate and distinct offense. Nevertheless, the penalty imposed upon the dealer regardless of any actual adulteration by him or complicity therein or knowledge thereof, tends to correct the evil which the legislature intended to suppress. It should seem to follow that punishment of the dealer in adulterated milk is germane to the subject of 'providing punishment for the adulteration of milk'.'"

The court is decidedly wrestling here with the problem of whether the title served notice that other offenses (the keeping of adulterated milk for sale and the offering of it for sale) were being created by the act, besides that of adulterating milk. Holding that a single act may constitutionally deal with the above offenses would not have alone required much labor. They are obviously germane.

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in the sense that they may constitute a single subject of legislation. What was troubling the court seems to have been the fact that the title made no reference to the keeping of adulterated milk for sale or the offering of it for sale. As the case stands, the holding is that matters germane to the (main?) subject need not be expressed in the title, which is perhaps too wide a proposition. If an act deals with two matters, like the creation of two separate and equally important (in the sense of none being the main subject) offenses, which matters, nevertheless, are sufficiently connected to constitute a "single subject", reference to only one of them may be actually misleading. That situation would certainly call for a brief reference that should include both matters. If an act deals with but one main subject of legislation but there are in the act other related matters dependent on the main subject, a reference to the main subject of legislation is, then, of course, a sufficient "signpost" of what the act should be expected to contain.

People v. Martinez 54 is, therefore, a case which also illustrates the general tendency of this court not

54. 40 P. R. R. 385 (1930)
to invalidate an act on account of its subject not being clearly expressed in the title, unless there is very substantial indication that the legislators have been materially misled by the title used. The court did indeed go somewhat far in its holding on the facts of this case.

Misgivings about resting the case on the reason that providing punishment for keeping adulterated milk for sale and of offering it for sale is germane to "providing punishment for the adulteration of milk" and that therefore the former is included in a reference to the latter in the title, unfortunately led the court to add the following sentence to the part of the opinion quoted above: "In any event, if any effect at all is to be given to the words 'and for other purposes', they are certainly broad enough to include the kindred offense." The catch-all phrase, "and for other purposes", has plagued titles for a long time. Does it really serve a useful purpose? It is, obviously, a meaningless phrase as respects the constitutional requirement that a bill shall contain only one subject. It cannot, of course, validate the inclusion of incongruous

55. See Rodríguez v. District Court, 60 D. P. R. 894 (1942).
provisions in an act (in the sense of dual subjects),
while matters germane to the general subject of the act
may be included without its aid. 56 Its usefulness, if
any, must be in regard to the clear expression in a ti­
tle of the subject of an act. People v. Martínez, supra,
points out to a situation where that catch-all phrase
apparently has some service to perform. According to
a dictum in People v. Martínez, the phrase "and for
other purposes" served notice that the act contained
other matters besides the one specified in the title. 57
Yet, under the theory that titles should be no more
than signposts of the general subject of acts, it is,
of course, presumed that all related matters covered
by an act are not listed in the title together with the
reference to the general subject. Courts have had no
trouble upholding titles that just make a reference to
the general subject of an act and which omit other re­

56. Laboy v. Corporación Azucarera, 65 D. P. R. 422
(1945).
57. On appeal, the Circuit Court of Appeals for the
First Circuit said: "The phrase in the title 'and
for other purposes', served notice that there are
other matters contained in the act than the mere
adulteration of milk, but so long as they were
germane and served the main purpose of the act, we
think the Organic Act was complied with... We do not
see how those voting for the act could in any way
have been misled by the title."
lated matters. The phrase "and for other purposes" is in this respect too, it is submitted, mere verbiage.

In cases where an act deals with two equally important matters, which, however, constitute a "single subject", the two should be mentioned in the title or, better still, a reference to the general subject of which both form part should be made. Mentioning only one of the two matters and adding "and for other purposes" is a dangerous procedure, even with liberally-minded courts as in *People v. Martínez* and *Martínez v. People*. Even in the only situation where that phrase is considered, in *dicta*, to have any meaning at all, it would be therefore dangerous to use it. It is therefore submitted that resort to catch-all phrases should be carefully avoided in the drafting of titles. Courts have long recognized that, even when used discriminately, which is hardly the case in Puerto Rico, catch-all phrases can add little to


60. 40 P.R.R. 385 (1930).

61. 46 F. (2d) 427 (1931).
clearness and simplicity of expression. 62

A review of the cases thus leads to the following conclusions regarding the drafting of titles:

1) The title of an act is not supposed to be a substitute for the body of the act, nor an index of its contents;

2) a title need only point to the general subject of an act; it is supposed to be only a signpost leading to the contents of an act;

3) trying to make a title into an index of the contents of an act is not only an unnecessary procedure but also a highly dangerous one; failure to make a complete index may mean failure of the whole act;

4) when amending an act, there is no need of quoting in full in the title of the amendatory law the title of the original act;

5) an act to be amended may be identified in the title of an amendatory act by reference to the number and date of approval of the original act; sections of a code may be amended by mere reference to the section

6) when the subject matter of the amendatory act is germane to the subject of the original act, there is no need of describing the subject matter of the amendment in the title of the amendatory act;

7) when the subject matter of the amendatory act is not germane to the subject of the original act, reference to the subject matter of the amendment must be made in the title of the amendatory act; this works, of course, as a limitation on the general method of amendment described in (5) and (6) above;

8) two subjects may not be "germane" for the purposes of permitting the method of amendment described in (5) and (6) above and still they may be "germane" within the meaning of the constitutional requirement that an act shall not contain more than one subject;

9) the title of an act with an emergency clause need not express that the act is emergency legislation;

10) the retroactivity of a law need not be expressed in its title;

11) the subject matter of a repeal clause need not be repeated in the title;

12) if the subject of an act contains a main matter, together with other related matters, reference to the
main matter, or to the general subject, is sufficient. All matters germane to the general subject of an act are covered by a simple reference in the title to the general subject. This is a third meaning of the word "germane", which should be distinguished from the two meanings set forth in (8) above;

13) if an act deals with two or more equally important related matters, the reference made in the title should be wide enough to cover them all; the practice of referring to only one of the matters and then adding a catch-all phrase should be avoided;

14) catch-all phrases like "and for other purposes", serve no useful function in the drafting of a title.

C. The enacting clause.

The Organic Act of Puerto Rico is among the constitutions that prescribe the exact wording of the enacting clause. Paragraph one of section 34 reads, in part: "...The enacting clause of the laws shall be as to acts, 'Be it enacted by the Legislature of Puerto Rico,' and as to joint resolutions, 'Be it resolved by the
In no case has the question yet been raised in Puerto Rico whether the above provisions are mandatory or directory. The majority rule is to the effect that they are mandatory, but there is very little reason indeed why there should be so much insistence on sacrificing substance to technical detail. The requirement that prescribed words be used for enacting clauses does not serve a purpose useful enough to justify the striking down of a legislative command for failure to comply with such a requirement. Mandatory requirements as to enacting clauses seem to be a survival of the nineteenth century efforts, under the influence of the historical school and the distrust it bred of the legislative process, to impose a number of irksome restrictions and technical requirements on the law-making power.

Concurrent resolutions are not subject to the above requirements as to the wording of the enacting clause, or even as to the having of an enacting clause. The following wording, however, has become of general use: "Be it

63. 39 Stat. 951 (1917). The Foraker Act, 31 Stat. 77 (1900), required that the enacting clause of the laws be, "Be it enacted by the Legislative Assembly of Porto Rico" (section 29). The Foraker Act does not deal with the enacting clause of joint resolutions. See: 1 Sutherland, Statutes and Statutory Construction, sections 1802-1803.
resolved by the Senate of Puerto Rico, the House of Representatives concurring", or the other way around, if the concurrent resolution originated in the House of Representatives.

The Organic Act does not specify where the enacting clause should be inserted. In view of the doctrine that obtains in some states to the effect that anything preceding the enacting clause of a statute may not be considered as law, care should be taken that such clause precede the purview.

The preamble.

The view obtains in some jurisdictions that the preamble is no part of the act. In such jurisdictions a preamble could not, theoretically, either enlarge or restrict the scope of a statute. A contrary view is

that in order to ascertain the true legislative "intent", we must look at the whole law, including the preamble as part of the law. 67 Formal rules of interpretation should not be allowed to bar the way to a try at a better understanding of a statute. Granted that there is a divergence in a given case between the purview of an act and its preamble, the interpretation that furthers best the values sought to be safeguarded by that particular piece of legislation should be the one adopted. Sometimes a court may find that giving effect to the provisions in the preamble, whether extensive or restrictive of provisions in the body of the act, will yield, sociologically speaking, the best results. Other times, the indicated course of conduct may be not to allow the preamble in any way to affect provisions in the body of the act. Assuming for the moment that rules alone do decide cases, a rigid rule, one way or the other, would not make for a just decision of individual cases.

67. On the fiction of ascertaining the legislative "intent", see: Conard, A. F., "New ways to write laws", 56 Yale Law Journal 458, 459-462 (1947). Kohler's contribution in this respect was of the utmost importance. He wrote: "The opinion that the will of the law-maker is controlling in construing legislation is only an instance of the unhistorical treatment of the facts of the world's history and should disappear entirely from jurisprudence. Hence the

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The view that looks at the whole act, considering the preamble, of course, as part of the act is, it is submitted, the better view.

A tendency to adopt the latter view may be seen in the only case bearing on this point decided by the Supreme Court of Puerto Rico, Molini v. Registrar. 68

In this case, a clause in the preamble read: "WHEREAS, it would greatly facilitate the work of the courts of justice and of the registries of property of this Island to have the guaranty that the plans submitted for their consideration in different actions, titles of possession and ownership, partition of property, etc.; inspected and verified by a technical official center." The body of the act specified that "a plan of every segregation or grouping made in regard to any property or properties shall be presented, and the part segregated or the properties grouped shall be showed thereon." Petitioner in this case sought to have the Registrar record a certified copy of

principles: rules of law are not to be interpreted according to the thought and will of the law-maker, but they are to be interpreted sociologically, they are to be interpreted as products of the whole people, whose organ the law-maker has become." (Cited in Pound, "The scope and purpose of sociological jurisprudence," 25 Harvard Law Review 140, 158 (1911)).

68. 52 P. R. R. 350 (1937).
the judgment of a district court declaring him the owner of a certain property, without exhibiting a copy of the plan of survey of the property, approved by the Department of Interior. The body of the act only required, as has been seen, that a copy of such plan be submitted in case that a segregation or a grouping be made; the clause in the preamble could, however, be interpreted in the sense of requiring a copy of the plans in cases like the one at bar. The court held that petitioner was not required to submit a copy of the plan of survey of his property.

The significant thing in the Molini decision was that the court refused to rest the case on the fiction that the preamble constitutes no part of the act, and made instead a try at reading together the preamble and the purview. Looking at the whole act in this case did not lead to a restrictive or an extensive interpretation of provisions in the body of an act in the light of provisions in the preamble, 69 which would have made for

69. The court said: "In referring to the preamble, we felt bound to state that perhaps the intention of the law-maker was to require the submission of plans in all cases because in no other way could the complete cadastre of the Island be formed in the manner outlined by the statute; but really the recital ("For Cuanto") instead of suggesting a new legal duty, rather seems to refer to the cases where, in accordance
a stronger case, still, the Molini case is authority for the proposition that a preamble is part of an act and that its provisions must be taken into consideration in the interpretation of a statute.

F. E. Horack, Jr., has noted the modern tendency to use policy sections in the body of the act, instead of preambles, which are readily falling in disuse. This seems advisable for reducing the danger of unenlightened courts resting cases on purely formal rules of interpretation, instead of probing deeper into the values at stake in the cases before them.

D. The Purview.

Paragraph nine of section thirty-four of the Organic Act provides: "No law shall be revived or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be reenacted and published at length." What is the test for determining

with the existing laws, plans must be submitted, or where the interested parties voluntarily present said plans."

70. 2 Sutherland, Statutes and Statutory Construction 354.
whether an act was been "amended" within the meaning of this provision? This constitutional limitation would constitute a serious obstacle to lawmaking if it were to be interpreted literally. Even exhaustive research would often fail to reveal subtle ways in which older statutes have been modified by new legislation. A majority of courts have thus limited the applicability of such constitutional provisions to cases where the legislature is purporting to amend a prior act. 70a. Paragraph nine of section thirty-four of the Organic Act would not, accordingly, apply to implied amendments, acts complete within themselves, implied or express repeals, or supplementary acts. The legislative draftsman must bear in mind this constitutional provision only when expressly attempting to amend, revive, or extend a law.

No Puerto Rican cases have been found holding an act void because of failure to comply with the above constitutional limitation. The few cases dealing with this subject follow in effect the formal test backed by the weight of authority. 71 As to the adoption by reference

70a. 1 Sutherland, Statutes and Statutory Construction, sections 1916-1927.
71. Seto v. MacLeod, 56 D.P.R. 807 (1940); Ugarte v. MacLeod, 56 D.P.R. 842 (1940); Pueblo v. Arrocho 34 D.P.R. 847 (1926); Rodríguez v. P.R. Railway, Light and Power Co., 30 D.P.R. 869 (1922).
of provisions of a prior act, it should be noted that clauses such as that of paragraph nine have been generally held to apply, although only when substantive provisions are adopted.

Paragraph nine of section thirty-four of the Organic Act is obviously directed at the confusion caused by blind amendments, which fail easily to apprise the legislators of the extent and meaning of the amendatory legislation. Without the aid of proper printing methods, however, constitutional provisions such as the one discussed remain largely ineffective, as careful perusal of both the prior act and the amendatory bill is still necessary to determine in which ways the law is being changed. The Legislative Reference Bureau of Puerto Rico has this year recommended that in amendatory bills the whole provision to be amended shall be printed, crossing out what is to be left out, and underlining what is to be added.

72. State v. Armstrong, 31 N. M. 220, 243 Pac. 333 (1926); Farris v. Wright, 158 Ark. 519, 250 S.W. 889 (1923).

Amendatory legislation presents other interesting problems. Sometimes, a legislature tries to amend a statute or part of a statute that has been repealed. What effect, if any, is to be given to the "amendatory" act? A few codes determine the act to be void. In the absence of such a legislative determination of the legislative intent, a majority of courts try to uphold the "amendatory" act, provided it can stand by itself. The latter is, obviously, the better rule, and should be the one embodied in general interpretation statutes. Neither formal logic nor a policy of punishing a legislature for technical mistakes should outweigh the policy of giving effect to the legislative will whenever expressed within constitutional bounds. Interestingly enough, the Legislature of Puerto Rico approved this year S. B. 858 (filed on March 21, 1947), a general interpretation statute which embodied in one of its sections the rule that if an act should purport to amend an act that has been repealed, the "amendatory" act should be treated, whenever possible, as if it had been passed concurrently with the act it sought to amend.

75. Reynolds v. Board of Education of Topeka, 66 Kansas 672, 72 Pac. 274 (1903); Anderson v. Board of Commissioners, 67 Colo. 403, 186 Pac. 284 (1919).
The bill was vetoed, on the recommendation of the Department of Justice, "because of it being logically inconceivable that something that does not exist may be amended".

To avoid similar difficulties as regards statutes that have been declared unconstitutional, care should be taken not to cure the defect, if curable, through an amendment, but through original legislation.

Repeals pose a few other problems. Does the constitutional limitation as to amendments, revivals, and extensions, embodied in paragraph nine of section thirty-four of the Organic Act, apply to repeals? It does not. Revival of a repealed act, however, by simple repeal of the repealing statute cannot generally be accomplished.

Quære, whether repeal of a special act that constitutes an exception to a general act will revive the latter.
The Supreme Court of Puerto Rico has in this respect distinguished between repeal of an act and suspension of the same. Repeal of an act which simply suspends the operation of another act will, within this doctrine, bring about the revival of the prior act.

Courts frequently talk about the existence of a presumption against repeal by implication. This presumption, and rules such as the one that statutes in derogation of the common law are to be strictly construed, seem to be the product of a tendency to see the whole of past law as an embodiment of the rule of reason.

Although presumptions and rules such as these do not, as a rule, have the decisive weight that they appear to have, yet they may often mislead courts prone to mechanical methods of interpretation. The above presumption, it is submitted, should be recognized as nothing but a clumsy method of ascertaining the legislative intent.

81. Villas v. Cortés, 39 D.P.R. 794 (1929); Aldea v. Tomás, 48 D.P.R. 393 (1935); Cruz v. Bucarán, 61 D.P.R. 737 (1943).
82. It was in this sense, as Dean Pound has pointed out, that the historical approach in America degenerated into a jusnaturalistic approach to the common law, viewing it as the embodiment of right reason. Thus, the historial school in the United States often turned into a natural law with historical premises. Pound, R.: "The Scope and Purpose of Sociological Jurisprudence," 24 Harvard L. Rev. 591, 600-601 (1911).
83. See: 1 Sutherland, Statutes and Statutory Interpretation, pp. 472-473.
In view of the well-recognized, although unsound, presumption against repeals by implication, express repeals should be used wherever the specific acts to be repealed are had in mind. Some courts, however, point to the existence of specific repealers as a fact which further strengthens the presumptions against repeals by implication. Such decisions should be vigorously denounced, lest what is often but the "good" reason for the holding be mistaken by some for the "real" reason.

Rules and presumptions of this type are but poor aids to the rationalization of a decision, empty forms with no specific content. It might help to include a clause in a general interpretation statute to the sense that the Legislature, by the use of specific repealers, does not intend to exclude other repeals by implication.

If conflicting acts are enacted in the same legislative session, which, if any, is to prevail? Pueblo v. Davila, following a well-recognized rule, holds

85. See section 2 (c) of S. B. 858, approved in 1947 by the Legislature of Puerto Rico.
86. 47 D.P.R. 356 (1934)
that if there is an irreconcilable conflict the latter act is to prevail. An attempt, however, to harmonize the two enactments will first be made. The same rule obtains when the conflict is between provisions of the same act, instead of between two different acts: the last provision will be held to repeal the prior provision. Especially as regards this latter rule, it should be noted that, although a rule of this type adds to certainty, yet it may often fail to bring about the best solution to a conflict. Giving effect to the first instead of to the last provision, may, of course, conceivably further in a better way the values at stake in a given situation. A simple "presumption", rather than a cast-iron rule, seems to be a better tool to achieve the best results in this situation. Certainty, after all, is not the primary end of law.

General statutes are held, as a rule, not to repeal special acts. This is another instance where there is great danger of a mechanical application of a rule, in disregard of the actual social, public, and individual

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87. Domenech v. Corte, 48 D.P.R. 542 (1935)
interests involved. Too great a reliance on such rules as keys to the determination of the legislative intent should, of course, be avoided. Courts are rarely misled, however, as has been often remarked, by such rules. Considerations of public policy seem to affect the decision, if not the opinion-writing, in most of these cases.

The repeal of a statute poses the problem of the effect of the repeal upon past activity and pending legal actions. In the absence of a general saving statute, the inclusion of a saving clause in the repealing act is indicated, if the intention be not to obliterate the repealed statute for all purposes, past and future. There is a general saving statute in Puerto Rico, however, which makes unnecessary the inclusion of a specific saving clause in each repealing statute.

One other provision of the Organic Act is of importance for our purposes. Paragraph fifteen of section thirty-four provides:

"The general appropriation bill shall embrace nothing
but appropriations for the ordinary expenses of the executive, legislative, and judicial departments, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject. The creation in a general appropriation bill of the position of municipal judge at-large was held to violate this constitutional provision. A distinction between an "employee" and a "public officer" must in this respect be made. Paragraph fifteen of section thirty-four should certainly not be interpreted as requiring that no government clerk may be appointed unless his position has been created by law.

As to the possibility of amending a special act through provisions in the general appropriation bill, De la Vega v. Sancho Bonet holds that the salary of

91. Pueblo v. Foote, 48 D.P.R. 492 (1935)
92. The court in Pueblo v. Foote, 48 D.P.R. 492 (48 P.R.R. 479, 483) establishes a distinction between "an ordinary expenditure of a department of the government" and "legislation of a general character." The court said: "Without these limitations, the general appropriation act could be the door through which matters of general legislation might pass without the opportunity of being fully and openly discussed. In the instant case, the provision which is attacked is not confined to fixing an appropriation to cover an ordinary expenditure of a department of the Government. It goes much further, since it creates an important office such as that of Muni-
a public officer, fixed in a special act, may be reduced in the general appropriation bill.

A special problem in the drafting and interpretation of Puerto Rican statutes is caused by the existence of two official sets of statutes, one in English and one in Spanish; each law approved is approved in a Spanish and an English form by the Legislature of Puerto Rico, and the two versions are signed by the Governor. In case of conflict between the English and the Spanish versions, which is to prevail? Prior to 1908, the determinant factor was which version had the Governor signed (or signed first, apparently). This was hardly an adequate rule, equivalent to upholding the English version in all cases, the Governor being always an American.

In 1908, the Legislature enacted the following rule (now section 13 of the Civil Code): "That in case of discrepancy between the English and Spanish texts of a statute passed by the Legislative Assembly of Porto Rico, Cipal Judge at Large... This is legislation of a general character which may not be included in an appropriation bill." The distinction is later developed in Ortiz v. MacLeod, 56 D.P.R. 871 (1940) and Pueblo v. Márquez, 62 D.P.R. 13 (1943).

93. 56 D.P.R. 753 (1940)
94. Pueblo v. Charón, 7 D.P.R. 428 (1904).
the text in which the same originated in either house shall prevail in the construction of said statute, except in the following cases: a) If the statute is a translation or adaptation of a statute of the United States or of any State or Territory thereof, the English text shall be given preference over the Spanish. b) If the statute is of Spanish origin, the Spanish text shall be preferred to the English. c) If the matter of preference cannot be decided under the foregoing rules, the Spanish text shall prevail. 95 As it may often be difficult to determine whether a statute is a translation or an adaptation of an American or a Spanish statute, or as a statute may originally be drafted in English, for example, without it being a "translation or adaptation" of a statute of the United States, it is submitted that, especially in these cases, as well as in any others where the Legislature does not want section 13 of the Civil Code to apply, it should be specifically provided in the statute which text is to prevail. 96

Some closing remarks as to the drafting of the pur-

96. See, for example, section 16 of Law 272, approved May 15, 1945.
view should be made. The tendency to draft long sections, with a number of different provisions, should be discouraged. This hinders the achievement of clearness and readability, and is a definite obstacle in the way of later amendments. Sections should preferably be short and composed of as few provisions as possible. Breaking the section into several specifically designated sub-sections (incisos) is also advisable. The weakness for provisos, often heaped one upon the other, revealed by our laws, should be corrected. By making the subject of a proviso the subject of a separate section or subsection, many difficult problems of interpretation are avoided. 97

E. Blanket repeaters.

Blanket repeaters are attached in Puerto Rico as a matter of course to every single piece of legislation. What effect, if any, does a blanket repealer have? It has been said:

"The blanket repeal-- 'all acts and parts of acts inconsistent herewith are hereby repealed'-- is a familiar clause in American statutes. But that its use is inconsistent with skilled draftmanship is disclosed by a study of legislative practice and an investigation of cases considering its effect. At best, it is mere surplusage; at worst, it may, paradoxically, lead a court to hold operative an act which the legislature probably wished to discard." 98


Not only are blanket repealers generally recognized as ineffectual, but there is the danger that they may be interpreted as repealing only inconsistent acts. The use of general repealing clauses should be consistently avoided.

F. The separability section.

The following clause, or one of similar import, is also generally included in Puerto Rican laws: "If any clause, paragraph, article, section or part of this Act is declared unconstitutional by a court of competent jurisdiction, such judgement shall not affect, impair, or invalidate the remainder of this Act, but its effect shall be restricted to such clause, paragraph, article, section, or part hereof as shall have been declared unconstitutional." Although this clause has not fallen in such disrepute as the general repealing clause, the courts generally fail to give much effect to it. A typical

97. See Vázquez v. Junta de Síndicos, 59 D.P.R. 145 (1941)
100. Note—"Effect of Separability Clauses in Statutes", 40 Harvard L. Rev. 626 (1927)
view of writers in the field is the following:

"The general rule regarding the separa-
bility of provisions which are constitu­
tional and those which are not is probably un-
affected by this section and whenever part
of an act is unconstitutional and the remain-
der of the act is separable, the separate
part will remain effective whether this clause
has been inserted in the act or not." 101

Other authors recommended that a specific separability
clause be used, indicating which clauses, if declared
unconstitutional, may be severed without impairing the
constitutionality of the rest of the act. 102 Others
fear that the use of the specific separability clause
alone may be interpreted to mean that other provisions
not mentioned in the clause are to be held inseparable
and are thus inclined to recommend both a specific and
a general separability section. 103 It is submitted
that the attempt to control the decision of ticklish
separability questions by separability clauses to be
applied mechanically by the courts is but a pious wish.
What can be accomplished, if anything, by separability
clauses can, anyway, be accomplished by the general rule

101. Mason, "Legislative Bill Drafting", 14 California
L. Rev. 298, 379, 388 (1927)
102. Sutherland, Statutes and Statutory Construction,
section 4036.
103. Stern, E.I.: "Separability and separability clauses
as to the separability of the constitutional parts of a statute, in cases where these can make sense when standing, alone. The fact must be realistically recognized that this is a typical area of great judicial discretion where rules rarely, if ever, decide cases. Use of separability clauses in the drafting of statutes should also, it is submitted, be discouraged.

G. Time of taking effect.

Paragraph six of section thirty-four of the Organic Act reads:

"No act of the Legislature except the general appropriation bills for the expenses of the Government shall take effect until ninety days after its passage, unless in case of emergency (which shall be expressed in the preamble or body of the act) the Legislature shall by a vote of two-thirds of all the members to each house otherwise direct."

It is clear that, contrary to common usage in Puerto Rico, there is no need to include in non-emergency legislation a clause expressing that the act will take effect ninety days after its approval. A "time" clause is only needed in case of emergency legislation. 104

specified that the act shall take effect immediately, or at any date within the ninety days after approval, the fact that there is an emergency must also be expressed, the above constitutional provision having been interpreted as mandatory. If it be omitted, the act will not take effect until ninety days after its approval. The ninety days do not begin to run until the day after the act is approved.

105. Pueblo v. Izquierdo, supra.
106. Ibid.
CHAPTER VII

THE ORGANIC ACT AND THE LEGISLATIVE PROCESS

The main purpose of these chapters has been to discuss some remedies within the reach of our own legislature for making a set of somewhat old-fashioned rules serve modern purposes. Part of a program of legislative reorganization, however, has to be the remodelling by Congress of our Organic Act. Three main features of this venerable document stand in particular need of change: the provisions as to the salary of legislators, the veto procedure, and the provisions as to duration of sessions. 108

Section 31 of the Organic Act, as amended, provides that members of the Senate and the House of Representatives of Puerto Rico shall receive compensation at the rate of $7 per day for the number of days of each regular session and of each special session.

108. Reference is being made, of course, only to provisions affecting the legislative process.
and mileage for each session at the rate of ten cents per kilometer. The need, however, for adequate full-time salaries is generally conceded. It is greatly to be desired that members of the legislature may not have to depend on the private pursuit of business or a profession for their means of subsistence. Unfortunately, this has been for too long one of those measures to which nobody is opposed, but as to which nothing is done. This is the situation prevailing also in most states. Some of them, however, have seen the light. California, Wisconsin, and Indiana pay the members of the legislature $1,200 a year, plus mileage. In Maryland, Minnesota, and South Carolina, they are paid $1,000 a year, plus allowance for transportation. Missouri legislators earn $1,500, plus mileage; the salary in Illinois, New York, and Massachusetts is $2,500 a year. The highest paid state legislators are Pennsylvania's, who get $2,000 per regular session, $500 per special session, and transportation and postage allowances. United States Congressmen get a

109. See the Book of the States, 1945-46, p. 107, for the complete list.
basic salary of $10,000 a year, plus some office and travelling expenses. This salary has been found to be ridiculously low and raises up to $25,000 are being considered.

If no action is secured on this point, as may probably be the case, could the Legislature of Puerto Rico raise the salary of its own members? A few state legislatures, with constitutional provisions similar to those of the Organic Act, and which could not secure a constitutional amendment, have enacted bills to that effect which have been held valid by the state supreme courts. 110

Section 34 of the Organic Act provides, on the subject of bills vetoed by the Governor:

".....If when a bill that has been passed is presented to the Governor for his signature he approves the same, he shall sign it; or if not, he shall return it, with his objections, to the house in which it originated, which house shall enter his objections at large on its journal and proceed to reconsider it. If, after such consideration, two-thirds of all the members of that house shall agree to pass the same it shall be sent, together with the objections, to the other house, by which it will likewise be

110. Collins v. Riley, 24 Cal. (2d) 912, 152 Pac. (2d) 169 (1944); State v. Yelle, 7 Wash. (2d) 443, 110 Pac. (2d) 162 (1941).
reconsidered, and if approved by two-thirds of all the members of that house, it shall be sent to the governor, who, in case he shall then not approve, shall transmit the same to the President of the United States. If the President of the United States approve the same he shall sign it and it shall become a law. If he shall not approve the same he shall return it to the governor so stating, and it shall not become a law. Provided, that the President of the United States shall approve or disapprove an Act submitted to him under the provisions of this section within ninety days from and after its submission for his approval; and if not approved within such time it shall become a law the same as if it had been specifically approved."

Note that the Legislature of Puerto Rico is totally powerless to override the Governor's veto, a provision that subordinates to a great extent the legislative branch of government to the executive branch. The irony of it all is that section 31 of the Foraker Act stated:

"If, when a bill that has been passed is presented to the governor for signature, he approves the same, he shall sign it, or if not he shall return it, with his objections, to that house in which it originated, which house shall enter his objections at large on its journal, and proceed to reconsider the bill. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it will

111. 39 Stat. 960-961.
112. 31 Stat. 83 (1900).
be likewise considered, and if approved by two-thirds of that house it shall become a law..."

Few indeed are the provisions of the old Foarker Act that may be commended: this is one of them, a statement of a provision common to most state constitutions. In some states, even the vote of a majority of the members elected is sufficient to override the governor's veto. In Connecticut they go even farther; a vote of the majority of the members present is enough. A democratic balance of power in Puerto Rico can hardly be achieved if the error of thirty years, embodied in the quoted part of section 34 of the Jones Act, is to remain in the statutes.

The third important change that we should seek in the legislative structure as outlined in the Organic Act of 1917 is the striking out of the provision limiting the duration of legislative sessions. As fully discussed in chapter two, continuity of legislative action is undoubtedly the ideal to be striven for. Provisions limiting the duration of sessions generally hark back - as does the institution of biennial sessions - to the nineteenth century distrust of legis-

113. This is the case in Arkansas, Indiana, Kentucky, New Jersey, Tennessee, and West Virginia.
114. V. section 33 of the Act; 39 Stat. 960, as amended.
The historical school of jurisprudence holding full sway in America at the end of the nineteenth century and beginnings of the twentieth, interference with the natural growth of the law, with the unfolding of the idea, was something to be frowned upon. Legislatures were the skeleton in the family closet of theory; a source of embarrassment that had to be kept out of sight. The times have changed, along with the theory, and legislatures now have come to occupy a conspicuous chair in the family living room. Theirs has been an increasingly important role in our complex society. A legislature can hardly perform its highly technical task only in a competent manner by meeting for two specified months every year. The task of law-making must be definitely recognized as fully a year-round job as is the task of law-enforcing or that of law-interpreting. Legislators—it has been pointed out—should earn a salary on which they can subsist while in office, without having to engage in their own business or professional pursuits.

If we agree on this, the chief possible argument against unlimited sessions—the extra expense that may be incurred in certain years—is left without basis.
Lastly, not a change in provisions, but the inclusion of a new one in the Organic Act, should be also sought from Congress: the statement by Congress that no further changes will be made in the Organic Act except with the concurrence of the people of Puerto Rico or their duly elected representatives. Ex-Governor Tugwell has written in this respect:

"Puerto Rico is not so fortunate in its constitution. It is, in the first place, not the result of a meeting of peoples' representatives in Puerto Rico. It is an act of the Congress and subject to amendment by any new act of the Congress. Any grants it may contain are capable of being withdrawn by simple majority action of that body without the consent of any Puerto Rican or of any representative group of Puerto Ricans. That this is the way a subject people is governed, not the way fellow citizens ought to be treated, is quite clear to me. And I do not make excuse for it. The reform bill of 1942, as proposed by the President's Committee, would have included a commitment by the Congress not to act in future without consultation with the Puerto Rican people. Why this elementary provision for respecting two million citizens' right to be consulted was removed by the Senate Committee has never been explained...." 115

It is true that such a commitment would be a moral, rather than a legal commitment, yet it is something that

115. Tugwell, Message of the Governor of Puerto Rico to the Sixteenth Legislature at its Second Regular Session, San Juan 1946, pp. 11-12.
democratic treatment of a democratic people requires.
PART II

JUDICIAL REORGANIZATION
CHAPTER VIII

PRINCIPLES OF JUDICIAL REORGANIZATION

The last forty years have been particularly fruitful in the attention given in the United States to problems of judicial administration. A pioneer effort was Dean Pound's famed St. Paul address of 1906 on "The causes of popular dissatisfaction with the administration of justice." ¹ Well-aimed thrusts were taken there at the current professional complacency with American judicial organization. "For I venture to say," wrote Pound, "that our system of courts is archaic and our procedure behind the times. Uncertainty, delay and expense, and above all, the injustice of deciding cases upon points of practice, which are the mere etiquette of justice, direct results of the organization of our courts and the backwardness of our procedure, have created a deep-seated desire to keep out of court, right or wrong, on the part of every sensible business man in the community." ² The English Judicature Acts

² 20 J. American Judicature Society 178, 183.
of 1873-75 furnished a clear example of a modern, economically designed judicial system. The Supreme Court of Judicature thereby created efficiently illustrated a key idea: the unification of courts. This idea served as the backbone of a powerful reform movement in American judicial administration which has slowly, but surely, brought about some significant changes in American judicial systems. It is to be hoped that the next few decades see even more vital reforms in the organization of American courts.

The experience of other highly developed judicial systems, such as the English, the French, the German, and the Spanish systems, the own experience of American courts, and the work of writers on this field reveal a set of principles on which attempts in our time at judicial reorganization have been, or aim to be, based. A list of such principles and policy goals may also serve as an indication of the main defects of the American, as well as the Puerto Rican, court systems.

3. Total unification of the courts has not been achieved in England, however. Appellate jurisdiction was again granted to the House of Lords in 1877 and efforts to incorporate the county courts into the Supreme Court of Judicature have not been successful.

4. For accounts of the history of the American judicial
1. The present organization of the courts is highly wasteful of judicial power. There are too many courts and too many judges working along hard-and-fast jurisdictional lines. The distribution of work is often unequal among courts of equal rank, one court often having to handle as much as ten times the number of cases handled by another court with the same number of judges. An effort must obviously be made to organize the courts in a more economical way. The striking possibilities in efficient organization of the courts may be gathered from a contrast

systems and of the main recent advances, see:


5. The judicial systems of France, Germany, and England are ably compared in Ensr honour, R. C. K.: *Courts and Judges in France, Germany, and England*, Oxford University Press, 1933, 194 p. For an account of the Spanish system, as it worked in the Spanish colonies, refer to Chapter IX of this thesis.

6. As far back as 1913, for example, the municipal court of San Juan disposed of 3,222 cases, while the municipal court of Adjuntas disposed of only 292. The situation at the present time is very much the same. V. Report of the Attorney-General, 1912-13, and the reports for subsequent years.
between the English and the Texas court systems. Texas, with a population of about six million, has four hundred and fifty judges above the rank of justice of the peace. England, with a population of about forty million, runs an efficient system of judicial administration with only eighty-eight judges. The suspicion that there also is something the matter with the Puerto Rican court system creeps in, in view of the English example, if we consider that in such a small island inhabited by two million people there are at present sixty-eight judges above the rank of justice of the peace and that frantic efforts are being made to add about thirty more.

2. The problem of designing a more efficient type of court organization is tied up with the problem of organizing more efficiently the administrative work of the courts. This is a much-neglected field. Most states still do not have an administrative office for the super-


8. See Senate Bill 932, filed on March 21, 1947. No action was taken on this bill by the Legislature of Puerto Rico.
vision of the business aspect of court organization, in spite of the very successful experiment represented by the Administrative Office of the United States Courts, created in 1939,9 and the organization of judicial work in a few cities like Detroit, Cleveland, and Chicago.10 Good organization of the administrative work of the courts means better statistics and better knowledge of the functioning and needs of the different courts and their branches. It also means assigning judges to where they are most needed, supervision and appointment of the clerical and administrative personnel of the courts, purchase and distribution of equipment and supplies, and help to conferences of key judges and administrative heads.

3. A third vital step towards a better judicial system lies in a reform of procedure, chiefly civil procedure. Many times have the chief defects of American civil procedure been pointed out: too many appeals, too many retrials, too many jurisdictional squabbles, too much technicality in pleading and in the admission of evidence,

too many jury trials, undeveloped pre-trial techniques, the continued clinging to old notions of trial by battle, and the lack of ample rule-making powers in the courts. A simplified procedure is essential to a highly efficient judicial system. Inadequate procedure may, of course, be as important a source of judicial waste as poor organization of the courts and inadequate supervision of the administrative work of the courts. A simplified procedure will not only aid in the speedy and just determination of controversies but will also make in fact for greater availability of the judicial process at less expense.

4. The best organized judicial establishment working with the most advanced procedural tools may still be a failure if its personnel is not a highly competent one. Better personnel must be attracted to the judicial profession. This entails provisions for a higher salary level, suitable retirement laws, and improved methods of selection and tenure.

5. A judicial system must have suitable machinery for self-criticism and self-improvement. Scheduled conferences of judges and, especially, judicial councils
have proved to be useful tools in this respect. The judicial council can also be of help as an advisory body for the selection of personnel, in the supervision of certain aspects of the administrative work, and as liaison between bench and bar.

6. We cannot go very far towards a better system of administering justice without an alert, responsible, well-organized legal profession, aware of its policy-making and policy-unmaking powers and of its corresponding obligation to society. The idea of an integrated bar seems to hold promise of being of great help in continuing the task of educating the profession both in legal and ethical matters. Education in the public interest both in and out of law school is important if the gap between law and public opinion is not to be allowed to become too wide and if the ends of law, as conceived in this stage of the socialization of the law, are to be carried out with the least waste of human effort.

11. The corresponding need for education in the public interest in the law schools need hardly be emphasized.

7. It is clear, in the light of past experience, that a judicial reform in the different fields discussed above must not be embodied in all detail in the judiciary article of a constitution. The judiciary article of a constitution should but outline in a broad way the main features of the system. The filling in of details must be left to the legislature and, as respects questions of procedure, to the rule-making power of the courts. Otherwise, changes in the system made imperative by changed social conditions may not be put into effect with the necessary ease.

An outline of the history of the Puerto Rican court system will be made in the following two chapters. Understanding of the Spanish colonial judicial institutions is necessary as the Spanish institutional background often exerts its influence in plans for governmental reform in Puerto Rico. Spanish experiments in Puerto Rico in a number of aspects of judicial administration throw light on ways of working out a more efficient court system.
CHAPTER IX

THE ORGANIZATION OF COURTS IN PUERTO RICO
UNDER SPANISH RULE

A. Introduction

1. The Spanish Judicial System at the end of the fifteenth century.

Near the end of the fifteenth century the basic outlines of the court system that Spain was later to adapt to its colonies are seen emerging. The Crown had already succeeded by then in its efforts to constitute the main source of judicial power. The Spanish nobles had been divested of their importance in this respect and the old, semi-autonomous municipios were rapidly being absorbed within the increasingly centralized governmental structure. The municipios, however, still played at that time, through the alcaldes ordinarios, an important part in the administration of justice. Some of these judges were elected by the

2. The alcaldes ordinarios (ordinary judges) constituted the most important members of the municipal council. They exercised both judicial and administrative functions, as well as participated in legislative ones. The institution of the alcaldes harks back to 1020 A.D.
municipal council or cabildo; others were royal appointees; which method of selection was used depended on the degree of autonomy of the municipality. Other considerations, to which we shall later refer, controlled in the case of the Spanish colonies. Each Spanish municipality had two alcaldes ordinarios who exercised the general trial jurisdiction. Both held one year terms. Some of their decisions could be appealed to the cabildo, others to higher magistrates named Corregidores. If the complaint did not involve a specified amount, the decision of the Alcaldes Ordinarios was final. The Corregidores were appointed by the King and held office for one year. They exercised jurisdiction over a wider territory than did the Alcaldes Ordinarios. The creation of the office of Corregidor was a powerful device employed by the King to do away with jurisdictional struggles between different municipalities and bring about a more centralized judicial

Vide: Ruiz Guifiaz-6., E.: La Magistratura India, Buenos Aires, 1916, pp. 283-287. The word alcalde (from the Arabic rad, meaning judge) now has come to mean mayor.

3. Consult in this respect: Book 4, Title 10, Law 3, of the Laws of the Indies (Recopilación de las Leyes de Indias). The first four editions of these revised statutes were issued in 1754, 1774, 1791, and 1841. For nineteenth century laws relating to the Spanish colonies, use La Gaceta de Madrid or the Boletín de
system. From the decision of a corregidor, an appeal could be had to the Alcalde Mayor ("great judge"), who as a rule governed a whole province. An important feature of the Spanish colonial system was later to be the obliteration of any distinction between Corregidores and Alcaldes Mayores. Still higher up were the Reales Audiencias and the Reales Chancillerías, sort of regional supreme courts. Again, there was to be no distinction between Reales Audiencias and Reales Chancillerías in the Spanish colonial system. In Spain itself, an appeal was possible from a Real Audiencia to a Real Chancillería. In the Royal Council (Consejo Real), mainly an executive body at the end of the fifteenth century, composed of advisors to the King, was lodged the final appellate jurisdiction. 4

The chief judicial officers known to the Spanish American colonies were, thus, the Alcaldes Ordinarios.

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4. The Spanish judicial system, as it was at the end of the fifteenth century is described by Alkamir y Creves, R., Historia de España y de la Civilización Española, Vol. 2, pp. 443-448, 452-458. See also: Gts Capdequi, J. M.: Manual de Historia del Derecho Español en las Indias y del Derecho Propiamente Americano. Buenos Aires, 1943, Vol. 1, pp. 34-5. For the general history of Spanish law, see: Riaza y
the Alcaldes Mayores or Corregidores, the Oidores (justices of the audiencias, in charge of civil cases), and the Alcaldes del Crimen (justices of the audiencias, in charge of criminal cases). \(^5\) But this system was not implanted by the Crown without a struggle between the King and the Descubridores and Conquistadores of the New World, to whom great concessions were made at first regarding the administration of justice in the new dominions, through the granting of charters or Capitulaciones. These charters thus constitute a source of primary importance for the study of the administration of justice in Spanish America at the end of the fifteenth and beginning of the sixteenth centuries.

2. The Capitulaciones.

The Capitulaciones granted to Christopher Columbus at Santa Fe on April 30, 1492, and later ones, provided that Columbus could propose three candidates for the governorship of each colony that might be founded, the

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García Gallo: Historia del Derecho Español (1934), and Minguijón's Historia del Derecho Español (1933).

5. Minor judicial officers called Tenientes a Guerra were also known later in the small towns which were not entitled to a municipal council with Alcaldes Ordinarios.
King to make the final choice. The office of colonial governor entailed considerable judicial power. Columbus was also given the right to appoint all Alcaldes, as well as police officers or Alguaciles, in the colonies, it being further specified that appeals from the Alcaldes could be heard by Columbus himself. The Capitulaciones further granted Columbus and his heirs in 1492 the title of "Admiral, Viceroy, and Governor of the Undiscovered Lands and Seas of the Indies". The Capitulaciones of Santa Fe, entered into at a time when the Spanish Government was obviously not aware of the significance of the step taken, constituted a great source of friction between it and Christopher, Diego and Luis Columbus, that lasted well into the fourth decade of the sixteenth century, Puerto Rico, as will be seen, was the scene of one of these bitter struggles. Soon

6. The Capitulaciones of Santa Fe renewed a practice common in times of John II and Henry IV of Spain of granting to individuals vast judicial and executive powers that could be transmitted to their heirs. This practice had been later prohibited by the Cortes of Toledo.

after the magnitude of the discoveries was realized by Spain, the Crown started to deviate from the terms of the Santa Fe agreement, beginning to vest judicial and executive power in its own appointees.

Thus we see that on April 24, 1505, Capitulaciones were granted by the King to Vicente Yáñez Pinzón, Captain of the Niña, who was appointed Captain and Corregidor of the Island of San Juan Bautista (Puerto Rico). The title of Corregidor empowered him to hear appeals from the judicial officers that might be appointed by him. The Capitulaciones specified that an appeal could be had to the governor of Hispaniola (Santo Domingo) from a decision by the Captain and Corregidor of Puerto Rico. The charter granted to Pinzón was to lapse if within the term of one year after the date of the grant he did not start to colonize the Island. The charter did lapse.
and no attempt was made to colonize the Island, discovered in 1493, until 1508.

B. The formative stage (1508-1550).

3. First period in the administration of justice: 1508-1511.

On June 15, 1508 and May 2, 1509, Capitulaciones were received by Juan Ponce de León from the Governor of neighbouring Hispaniola. After Ponce de León founded a colony in Puerto Rico, the King appointed him Governor on August 14, 1509, the first had by the Island. All jurisdiction, both civil and criminal, was vested in Ponce de León, who could also make all necessary judicial appointments. An appeal could be had from a decision by Ponce de León to the Governor of Hispaniola.


11. The text of the first Capitulaciones is not known. The second may be read in 1 Boletín Histórico de Puerto Rico, 124.

12. Ponce de León appointed one man in 1509, Cristóbal de Sotomayor, to take charge of the administration of justice. Braun, S., op. cit., p. 27.

13. The title of August 14, 1509, orders that Ponce de León be "Nuestro Gobernador de la dicha isla, e tengas por Nos o en Nuestro Nombre la Gobernacion e Husgado della ...." On March 2, 1510, Ponce de León is appointed
This subjection of Puerto Rico to Santo Domingo as to judicial matters was to last until the end of the eighteenth century.

The appointment of Ponce de León as Governor of the Island caused the first open clash between a royal appointee and the successors of Columbus. Diego Columbus, son of the Discoverer, succeeded in following Ovando as Governor of Hispaniola, and in 1510 he sent a new governor and Alcalde Mayor (Juan Cerón) to the Island, in direct contravention of the appointment of Ponce de León by the King. 14 Ponce de León had Cerón put in prison, and Diego Columbus appealed to the Council of Castile. The Council of Castile upheld the right of Columbus and his successors, among other things, to appoint the executive and judicial officers of Puerto Rico, and on June 21, 1511, Ponce de León was advised of his deposition by the King. The arrival of Cerón, November, 1511, marks the end of the

14. On March 3, 1509, the King advised Diego Columbus...
first period in the administration of justice in Puerto Rico.

From 1508 to 1511, then, all jurisdiction is vested in the Governor of the Island, who, in judicial matters bears the rank, as compared to other judicial officers in the colonial system, equivalent to that of Alcalde Mayor or Corregidor. Inferior judges may be appointed by the Governor for such terms as he may please. The decisions of the inferior judges (only one judge was appointed by Ponce de León) could first be appealed to the governor of Puerto Rico and then to the governor of Santo Domingo. A third appeal was sometimes available to the Council of Castile. A second Spanish institution, the Casa de Contratación, had jurisdiction after 1509 over some criminal cases in trade matters. The significant feature of this period, as distinguished from

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not to interfere with the government of the Island of "San Juan Bautista del Boriquén" (Puerto Rico), because of the agreement made with Ponce de León. Braulio, S., op. cit., p. 26.

15. Supervision of colonial affairs was at first carried out through an especially created committee in the Council of Castile and through the Casa de Contratación. This latter institution was created on January 10, 1503, chiefly for the purpose of supervising trade with the colonies. The special committees of the Council of Castile was set up in 1511, and eventually developed into an independent body, the celebrated
the second period, is that the governor held office directly through the King and not through appointment by the family of Columbus. The administration of justice was made, then, the responsibility of the Spanish government itself, rather than the responsibility of a private family, as in feudal times. The exercise of judicial functions by the governor of the Island was to remain an important feature of the judicial system until the nineteenth century.

4. The second period: 1511-1537.

The second period in the judicial history of Puerto Rico opens in 1511 with the arrival of Diego Columbus' appointees and lasts until 1537. In spite of recognition by the Council of Castile of the right of Diego Columbus to appoint the executive and judicial officers of Puerto Rico, the struggle between the Crown and the family of Columbus for the power to control colonial affairs was continued. The Crown made it clear, in the first place, that Diego Columbus himself held office as governor of

Council of the Indies, established in 1524. Besides constituting the supreme tribunal in Indian affairs, the Council of the Indies performed vital administrative and judicial functions. V.: Schaffer, E.: El Consejo Real y Supremo de las Indias, Sevilla, 1935.
Hispaniola as a royal appointee, rather than through the provisions of the Santa Fe agreement. In the second place, as a powerful check on the power of colonial governors, Spain created in 1511 the first audiencia of the Americas, in the Island of Santo Domingo. As a further check on all royal officers, the governors of Santo Domingo and Puerto Rico of course included, the Spanish government transplanted to America the Spanish institution of the Residencia.

The Residencia consisted of a trial to which all royal officers had to submit upon expiration of their terms. A royal judge, Juez de Residencia, especially appointed for the purpose either by the King or by the Spanish government transplanted to America the Spanish institution of the Residencia.

17. Created by Royal Provision of October 5, 1511. Eleven more audiencias were soon created in the Spanish colonies. Recopilación, Book 2, Title 15, Law 1. The audiencias exercised important legislative and administrative functions, besides their judicial powers. The audiencia of Santo Domingo was discontinued and later reestablished on September 14, 1526. Recopilación, Book 2, Title 15, Law 2. For the history of this, the most important institution of the Spanish colonial system, consult: Cunningham, C. H.: The audiencia in the Spanish Colonies, 1919; Malagón Parcelló, v.: El Distrito de la Audiencia de Santo Domingo en los siglos XVI a XIX, Ciudad Trujillo, Universidad de Santo Domingo, 1942; Ruiz Guíñazú, E.: La Magistrature indienne, Buenos Aires, 1916; Pelsmaeker: La Audiencia en la América Española; Sucre-Reyes, Le Système Colonial Espagnol dans l'Ancien Venezuela.
audiencia, depending on the rank of the officer, was sent to the place where the functionary had held office, and everyone who felt himself aggrieved by an act of the officer could enter a complaint against him. 18

The Residencia constituted a permanent feature of the Spanish colonial system until the end of the nineteenth century. It was, as might be supposed, a powerful agency in the effort at thorough centralization.

The Residencia, together with the complicated system of checks and balances among the different royal officials, the governor, the Acesor (legal adviser to the governor), the judges of royal appointment, the Intendente (head of the treasury), and also between the governor and the municipal councils or cabildos, made for an over-centralized, inquisitorial government which failed to spark the initiative of high local officials by its failure to allocate responsibility on definite officials and institutions. The sixteenth, seventeenth, eighteenth, and a

18. For two interesting Juicios de Residencia, that of Juan Ponce de León, in 1512, and of Francisco de Bahamonde, in 1569, see 11 Boletín Histórico de Puerto Rico 321, and 12 Boletín Histórico de Puerto Rico 1, respectively. Ponce de León was condemned to pay a large fine but, after several appeals and retrials, he was acquitted. The decision of a Juez de Residencia could be appealed directly to the Council of Castile, later to the Council of the Indies. Recopilación, Book 5, Title 12, Law 2.
good part of the nineteenth centuries in Puerto Rico are, in consequence, marked by the diffusion of judicial power through different institutions and officials charged with many administrative, as well as judicial, functions.

The period from 1511 to 1537 sees the division of the Island into two judicial districts in 1515. Justice was still administered through justicias appointed by the governor, who himself continued to serve as Alcalde Mayor and as such was empowered to hear cases in the second instance. The governor was also the only official empowered to try Indians in the first instance, with appeal to the audiencia of Santo Domingo. All military

19. The district of San Juan and the district of San Germán. This happened during Ponce de León's second term as governor. 12 Boletín Histórico de Puerto Rico 65.

19a. Alcaldes Ordinarios were also known at this time, who apparently enjoyed great freedom from governmental intervention, as disclosed by a letter of the municipal council of Santiago, in Cuba, to the King, September 22, 1530, asking him to see that the cabildo of Santiago should enjoy the same privilege of non-interference by the governor, as did the cabildos of San Juan and Jamaica. 2 Colección de Documentos Inéditos de Ultramar, 2a. Serie, p. 153. See footnote 27 of this chapter for the creation of the first municipal council in San Juan, and Section 5 of this chapter for a description of the functions of Alcaldes Ordinarios and the Cabildo.

20. Reconstitución, Book 5, Title 3, Law 65; Book 5, Title 10, Law 5.
jurisdiction was also entrusted to him, and he was the only judge with original jurisdiction over certain special suits, such as those involving the condemnation of property for the purpose of building public roads. 21

The decisions of the governor of Puerto Rico could be appealed, not to the governor of Santo Domingo, as before, but to the audiencia of Santo Domingo. 22 Criminal cases could be appealed twice to the audiencia; the second appeal (Segunda Suplicación) was in the nature of a motion to reconsider. The second appeal was not allowed in civil cases, unless the decision of the audiencia reversed the judgment of the lower court. 23 The audiencia also had original jurisdiction over a class of cases known as Casos de Corte (among these were: civil litigation between people of noble birth, duels, cases of breaking into a church or palace, etc.). 24

21. Recopilación, Book 3, Title 3, Law 53. For laws referring to the military jurisdiction, consult the Recopilación, Book 3, Title 11, Laws 1-10; Book 3, Title 10, Laws 3, 11; Book 5, Title 10, Law 15.

22. The appellate procedure followed may be studied in the Ordenanzas para los Jueces de Apelación en Indias issued by the King on October 5, 1511, and the Ordenanzas para la Audiencia de Santo Domingo of June 4, 1528. These documents may be consulted in Malagón Barceló, J., op. cit. (footnote 17), pp. 85-89; 100-104.

23. Title 12 of Book 5 of the Recopilación deals with the different types of appeals. V. also, footnote 22.

decision of the audiencia was available at first to the Council of Castile and later to the Council of the Indies. A high jurisdictional amount was a prerequisite for allowance of the appeal, contrary to the procedure followed in the peninsular audiencias.

The ecclesiastical jurisdiction was exercised by a bishop. 25 Constant friction occurred between the bishop, the governor, and the audiencia, the latter two often getting the better part. The audiencia, in fact, could set aside a judgment of the ecclesiastical court through a "writ of force" (Recurso de fuerza). 26 The beginning of municipal councils, developed in the third period, occurs in 1511 with the creation of a municipal council appointed by the King. 27

The second period ends in 1537 with the surrendering to the Crown by Luis Colombus, son of Diego, of all his

25. The first bishop of Puerto Rico, Alonzo Manso, was appointed in 1511 and arrived at San Juan in 1513. The beginnings of the Inquisition in Puerto Rico are connected with his name, as in 1519 he was invested Provincial Inquisitor of the Island. Relating to the abolition of the Inquisition in Puerto Rico in 1813, see: 7 Boletín Histórico de Puerto Rico 380.
26. For a discussion of the Recurso de fuerza, see: Cunningham, C. N., op. cit., p. 411; Acosta, J. J., notes to Abbad y Lasierra, Fray Inigo's Historia geográfica, civil y natural de la Isla de San Juan Bautista de Puerto Rico, 1866, p. 258 ff.
27. V. Malaret, A.: "Desarrollo del derecho escrito en
a small and poor colony, harassed by the dangers of insubordination and attacks and with little mineral wealth to attract colonizadores. A census taken in 1530 reveals but 369 Spaniards in the Island, together with 1,148 Indians and 1,523 negroes. Only two towns existed at the time and a very few scattered villages.

5. The third period: 1537-1550.

In the first period (1508-1511), we saw the governor emerge as a most important judicial officer, the immediate source of judicial power in the Island. This character he was essentially to maintain well into the nineteenth century. The second period (1511-1537), sees the creation and rise of the audiencia of Santo Domingo, with jurisdiction over Puerto Rico, another permanent feature of the judicial system of the Island in the rest of the sixteenth and in the seventeenth, eighteenth, and

Puerto Rico" (1903-1904), 5 Revista Jurídica de la Universidad de Puerto Rico 94 (1935).

28. This happened on January 1, 1537. On September 28, 1537, alcaldes ordinarios took charge of the government of the Island. The period from 1511 to 1537 is actually not wholly dominated by the Columbus family. Interference by the Crown and its instrument, the Audiencia, led to the appointment of some governors by these bodies, rather than by Diego Columbus (who died in 1526) or his heir.

29. Coll y Coste, C.: "Estado de la colonización espa-
nineteenth centuries. A third feature of the final system acquires definite force during the third period: the institution of the Alcaldes Ordinarios. Thus the whole period from 1508 to 1550 can be characterized as the formative era of the judicial system of Puerto Rico under Spanish rule. No basic changes, aside from the institution of minor judges called lieutenants of war, tenientes a guerra, in small towns without a municipal council, occur in the judicial structure of the Island as it stands in 1550 until the second decade of the nineteenth century.

Upon relinquishment of his family rights by Luis Colón, Charles V ordered by Real Cédula (royal letters patent) of January 12, 1537 that the lieutenant governor and other officials appointed by Luis Colón be deposed and that the Island be henceforth governed by Alcaldes Ordinarios. 30 There being at this time only two towns

30. The Cédula states in respect to the Alcaldes Ordinarios: "los quales mandamos que conozcan, en primer ystancia, de todas aquellas cosas que podía conocer el dicho lugar teniente de nuestro gobernador... así en lo civil como en lo criminal, y en las apelaciones que se interpusiesen de las sentencias que dieren los tales alcaldes Ordénamos vayan ante nuestro presidente e oidores del Audiencia de la isla Española, salvo en aquellas cosas que, segund leyes de nuestros reynos e ordenanzas dellos, pueden o deben, y a los ayuntamientos de las dichas ciudades e villas....."
entitled to the privilege of electing a municipal council
or cabildo, but four Alcaldes Ordinarios were elected,
two for each council, as required by the laws of the time. 31
The main body of the municipal council, composed of Regidores,
was elected by the people. The Alcaldes Ordinarios
were then elected by the Regidores and held office for a
year. 32 This was the closest Puerto Rico got to democra-
tic government under the Spanish regime.

Besides being entrusted with the government of their
respective districts without any interference from either
a royal or a Colombian governor, the four Alcaldes Ordina-
rios heard all civil and criminal cases in the first ins-
tance. Their decisions were final in small causes. Cases
involving a certain jurisdictional amount could be appealed
to the whole cabildo. If, again, the case involved a
certain sum, a further appeal could be had from the cabildo
to the audiencia of Santo Domingo. 33 Procedure from then on

31. V. Recopilación, Book 4, Title 10, Laws 1, 3. The other
important members of the Cabildo, besides the Alcal-
des Ordinarios, were administrative officers called
Regidores, of which there were twelve in cities and six
in towns (either in villas, next in rank to cities, or
in pueblos). Recopilación, Book 4, Title 9, Law 2.
32. See the Recopilación, Book 4, Titles 9-10. Towns found-
ed by the grantees of capitulaciones had their cabildo
appointed by such grantee: Recopilación, Book 4, Title
3, Law 10. The municipal councils governing Puerto
Rico from 1537 to 1550 were, however, elected by the
people. An Alcalde Ordinario was not eligible for re-
élection until two years had elapsed after the expira-
was as described in the second period (Sec. 4).

The renewed vigor of the Spanish medieval municipio in the Spanish colonies at a time when municipal institutions in the peninsula had entered a period of marked decadence 34 is one of the distinguishing characteristics of the colonial government. 35 Even after the Alcaldes Ordinarios were replaced by a governor as head of the insular government, they continued to perform vital governmental functions in their district, aside from their important judicial duties. The government of Puerto Rico by Alcaldes Ordinarios was interrupted in 1544 by the appointment of a governor by the King. The Alcaldes Ordinarios, however, continued to perform their judicial functions and in 1548 were again entrusted with the government

33. 34. 35. The specific sums, as well as other procedural details, are set forth in the Recopilación, Book 5, Title 12. Also see: Ots, J. M.: "Manual de historia del derecho Español en las Indias y del derecho provisamente indiano, (1943), Vol. 1, p. 186.

33. See s. 1 of this chapter.

of the Island. The third period in this formative stage of the judicial system of Puerto Rico under Spanish rule closes with the appointment in 1550 of a new governor. A period of stability and actual stagnation in the social and economic, as well as the politico-judicial, life of the Island is then to open, to last until 1815, when the reverberations of the fight for independence of the Spanish colonies forces Spain to revise her colonial policy in the islands untouched by the war.

C. The Middle Colonial Period: 1551-1815.

6. The second half of the sixteenth century.

Little progress is seen in Puerto Rico in the second half of the sixteenth century. At the close of the century there were still only two towns and a few communities of cattle-raising families scattered along the river banks. There were 2,500 white persons, the garrison excluded, in the Island. Measures were taken against emigration; the lure of rich lands in Tierra Firme threatened to deplete...
the population. The colony was utterly unable to support itself. Whatever little mining there had been in the early stages of colonization had come to a stop long before the end of the century. The economic activity of the inhabitants was centered about cattle-raising, sugar and ginger. Little more than a military penitentiary by this period, the Island drew its support from the *situado*, a sum of money sent yearly to Puerto Rico from the treasury of Mexico, which practice began around 1586. Even this lifeline was constantly threatened by the incursions of English, Dutch, and French pirates. The Island itself was often attacked by powerful fleets. Sir Francis Drake had the Island under attack in 1593 and, in 1598, the Earl of Cumberland actually took San Juan, capital of the Island.

The judicial structure had elements of the three preceding periods. The Island was divided into two judicial districts. The original trial jurisdiction was vested in two Alcaldes Ordinarios for each district. Their judgments could be appealed, as in the third period,

37. The English held San Juan from June 21, 1598 to November 23, 1598.
to the whole municipal council or cabildo. A fundamental distinction between this and the third period is that the governor held, ex officio, the presidency of each cabildo. 38 He was expressly forbidden, however, by a decree of September 22, 1560, 39 to meddle with the trial jurisdiction of the Alcaldes Ordinarios. It should, nevertheless be noted that, since 1559, the Alcaldes Ordinarios elected by the municipal council could not take office unless the choice was confirmed by the governor. 40 Small causes, up to a certain amount, could be appealed to the Cabildo, 41 the decision of which was final. 42 If a larger sum was involved, the appeal lay to the governor, 43 who still bore the title of Justicia Mayor. Appeals therefrom to the Audiencia of Santo Domingo and, further, to the Council of the Indies, were as described in the account of the second period. 44

38. The governor himself performed this function as regards the cabildo of San Juan. To the other cabildo, that of San German, he appointed a lieutenant to perform that function. Vide: "Memoria de Melgarejo (1582)" in Boletín Histórico de Puerto Rico 75.

39. Recopilación, Book 5, Title 2, Law 14. The law states: "Hacemos que los gobernadores, corregidores y Alcaldes Mayores no conocan de las causas civiles o criminales, de que conociesen los Alcaldes Ordinarios, ni las advocuen a si..."
7. The seventeenth century.

The decadence of Spain in the seventeenth and eighteenth centuries and the vast deterioration of its position as a world power left its mark in colonial life.

The once thriving empire degenerated into a cumbersome bureaucracy with little ability properly to exploit the natural resources of the subject countries and achieve commercial expansion. The seventeenth century in colonial Puerto Rico is hardly more than a succession of attacks by pirates and long waits for the arrival of the Mexican situado. Commercial intercourse could only be had between San Juan and Seville. Little was done toward the development of agriculture in the Island, aside from the establishment of a few more sugar mills and the introduction of tobacco in 1636. 47

41. Recopilación, Book 5, Title 12, Law 17.
42. Recopilación, Book 5, Title 12, Law 20.
43. Recopilación, Book 5, Title 12, Law 12.
44. See section 4 of this chapter.
45. There were eight major attacks between 1595 and 1703.
47. So insignificant did the production of tobacco actually become that it soon had to be imported again until the nineteenth century.
The city of San Juan consisted in 1673 of only 259 houses and 365 free men with their families. \(^{47a}\)

The only significant change that occurs in the judicial structure is the establishment of a group of minor judges, called Tenientes a guerra, of inferior rank to the Alcaldes ordinarios, and who could be called upon by the latter to carry out their orders in the district over which they exercised jurisdiction. \(^{48}\) The Tenientes a guerra were appointed by the governor, one for each new town founded. \(^{49}\) They were paid by fees and held office at the pleasure of the governor. They were the representatives of the governor and, as such, full administrative and military powers were vested in them. Their judicial functions, however, were more

\(^{47a}\) V.: Blanco, T.: Prontuario histórico de Puerto Rico, San Juan, Biblioteca de Autores Puertorriqueños, 2d. ed., 1943, p. 36.

\(^{48}\) V.: the Directorio General of March 22, 1770 (a compilation of the organic provisions concerning the tenientes a guerra, prepared by order of the governor and captain-general of the Island. It is reprinted in: Boletín Histórico de Puerto Rico 92.), section 111. Police officers called Alcaldes de la Hermandad were also made subject to orders by the Alcaldes Ordinarios. To complete the picture of the judicial system in the sixteenth and seventeenth centuries, it should be noted that the Alcaldes de la Hermandad were vested with jurisdiction over some criminal cases.

\(^{49}\) Only towns of the category of villa, of which there were only two in the seventeenth century, were entitled to have a municipal council at this time. Each
limited. They had civil jurisdiction over cases involving up to 50 pesos and served only as committing magistrates in criminal cases. Civil cases involving a higher amount, as well as criminal cases, could only be tried in the first instance by the four Alcaldes Ordinarios of the two judicial districts of the Island. Appellate procedure remained as described in the preceding section. An appeal does not seem to have been allowed from decisions by the tenientes a guerra, but the law provided for complaints to be entered before the Captain-General against any action by the tenientes a guerra. The tenientes a guerra were not subject to the Residencia.

It was indeed a salutary tendency of the Spanish judicial system in the colonies, as may be noticed from the discussion of the different periods up to the seventeenth century, greatly to restrict appeals. Few except weighty causes could, in fact, be appealed more than once. Civil cases involving a very large sum could be appealed.

50. Directorio General (v. footnote 48), arts. 28, 29.
51. Ibid., art. 3, section 15.
52. Ibid., art. 3, section 39.
53. Ibid., section 166.
up to three times, to the governor, the audiencia of Santo Domingo and, finally, to the Council of the Indies. It was highly unusual for a criminal case to be able to undergo more than two appeals.

At the close of the seventeenth century the judicial system of the Island chiefly comprises five tenientes a guerra, four Alcaldes Ordinarios, corresponding to two cabildos, and one Alcalde Mayor (the governor).

8. The eighteenth century.

Little substantial progress is experienced by Puerto Rico in the eighteenth century. Some barriers to the development of the Island are, however, lifted at this time, which prepares the way for a greater, though not very successful, effort at self-support during the nineteenth century. The commercial monopoly of Seville was broken early in the century and that of Cádiz in 1772, when eleven Spanish and thirty-four Colonial ports were opened to commerce. Sugar was decidedly, as it is today, the main agricultural product.

54. Counting the two aplicaciones before the audiencia as one. See section 4 of this chapter.

55. No significant changes occurred at this time in respect to the ecclesiastical jurisdiction. See
but only slightly over 3,000 acres were under cultivation in 1783. Coffee, a major crop during the nineteenth century and part of the present one, was brought to the Island in 1736 from neighbouring Santo Domingo. Ninety years of peace helped a total population of 50,000 in 1765 triplicate itself at the end of the century, too fast a rate for the crawling pace of agricultural and commercial expansion. Agricultural development was encouraged by a revision of real property law but, still, the inhabitants of the island in the second half of the eighteenth century could be accurately described, in the phrase of a special envoy of the King, as the poorest Spanish subjects living in America.

section 4 of this chapter. The division of the Island into five administrative districts, with a teniente a guerra at the head of each, was carried out in 1692. The judicial districts of the Island which, of course, comprised the tenencias a guerra, continued to be two. Breu, S.: *Historia de Puerto Rico*, 1904, pp. 153-154.

56. 1 Boletín Histórico de Puerto Rico, 163.
57. This long period of peace was interrupted in 1797 by an English attack.
58. Up to 1778, property in land could only be acquired through special grants by the King embodied in royal letters patent called cédulas de vecindad. A general distribution of royal lands in Puerto Rico was undertaken at that date and a modern system of free individual tenure permanently established in 1778. Consult:
Throughout the eighteenth century, all judicial jurisdiction was still vested in the governor as the highest insular magistrate. The number of Alcaldes Ordinarios, and their attributions, remained essentially the same, while many new lieutenancies of war were established, as new pueblos arose. The whole island was still divided into two judicial districts, headed by Alcaldes Ordinarios. The increase in population, with the corresponding increase in towns and tenientes a guerra, prompted the royal cédula of January 30, 1778, ordering the division of the Island into five judicial districts. The order was not put into effect, however, until the beginning of the nineteenth century.

An important new judicial post was established in 1761: the post of Asesor, or legal adviser to the governor. This was the first judicial position created in the Island that had to be filled by a lawyer; the tenientes a guerra, as well as the Alcaldes Ordinarios were all lay

60. V.: "Memoria del Mariscal Alejandro de O'Reilly" (1765), printed in Tapia y Rivera, A.: Biblioteca Histórica de Puerto Rico (1852).
magistrates, as was the governor himself, who almost invariably was a military careerist, with the rank of captain-general. The Asesor actually took over the military and civil jurisdictions of the governor and, being appointed by the King (for a term of five years), served as a check on the great powers of the governor. Although, theoretically, he was only an adviser, the governor could not legally act contrary to his advice. If he disagreed with a legal opinion submitted to him by the Asesor, the procedure for the governor to follow was to call for the advice of another lawyer, if one was to be found in the Island. If this lawyer was of the same opinion as the Asesor, there was nothing that the governor could lawfully do but follow the advice of the Asesor. If a different opinion was submitted to him by the second lawyer, then the only thing he could do was to forward the case, together with the two opinions, to the Council of the

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61. Besides the title of Teniente de Gobernador, the asesor also bore that of auditor de la gente de guerra de la Ciudad y Isla de San Juan de Puerto Rico.
62. The cédula of August 26, 1761 (reprinted in 3 Boletín Histórico de Puerto Rico 269), mentions the lack of lawyers in Puerto Rico at that time.
Indies, for it to make the final decision. 63

As a practical matter, however, we must not lose sight of the powerful position enjoyed by the governor, in respect to other government officials, even royal officials. The laws of the Indies made it the duty of the governor to submit annual reports to Madrid, listing all government officials in the colony, commenting on the quality of their services, with recommendations for promotion or dismissal. 64 A full report had to be filed by the governor concerning the administration of justice. 65 Even the private lives of the magistrates and of their wives did not escape official scrutiny by the governor. 66 Until the middle of the nineteenth century, no magistrate could marry without the permission of the governor. The institution of the audiencia, rather than that of the Asesor.

63. See: Recopilación, Book 5, Title 2, Laws 37, 39, 41. The post of Asesor was abolished in 1835 in Puerto Rico.

64. Recopilación, Book 3, Title 14, Laws 6, 7.
65. ibid., Book 3, Title 14, Laws 5, 6, 8.
66. ibid., Book 2, Title 16, Laws 66, 67.
67. For early laws prohibiting the marriage of presidentes, oidores and alcaldes within certain circumstances, see: Recopilación, Book 2, Title 16, Laws 82-84. Right until the establishment of the American military government in 1898, no magistrate (municipal judges and mayors excluded) could hold office 1) in the town...
was the only mainly judicial body actually equipped
to curb the powers of the governor. The policy of
the Spanish government, however, as to the office of
governor of Puerto Rico during the seventeenth and
the eighteenth centuries, seems to have been to allow
it somewhat greater freedom than in colonies enjoying
the privilege of having their own audiencia. 68 The
dictatorial ardor of Puerto Rican governors of the
time is firmly denounced by the author of the first

68 Thus we find, in 1699, Puerto Rico being exempted for
a brief period, from its subordination to the audiencia
of Santo Domingo, due to the attacks by the English.
At the end of the seventeenth century, the King express-
ly enjoins the audiencia of Santo Domingo from sending
investigatory commissions (jueces de comisión) to
Puerto Rico (cédula of October 24, 1681), and from
ordering judges to try the Residencia of the governor,
extcept in certain emergency cases (cédula of September
24, 1682), both of which functions the colonial audiencies
performed in other districts as a matter of course.
history of the Island, which was published in 1788. 69

No other basic changes in the judicial structure of the Island occur at this period. 70 A royal treasury court, however, with jurisdiction over cases involving the royal revenues, is now seen in operation. 71 Almost totally dependent on the governor, still the administrative official primarily responsible to the King on these matters, this court does not achieve great significance until the second decade of the nineteenth century, when

69. Abbad y Lasierra's Historia geográfica, civil y natural de la isla de San Juan Bautista de Puerto Rico. A second edition, annotated by J. J. Acosta, appeared in 1866. Abbad states:

"La autoridad y gobierno depositados en un militar padecen sus alteraciones según la mayor instrucción y modo de pensar del que gobierna. Todos tienen el carácter de Capitanes Generales y se inclinan a esta jurisdicción más naturalmente que a la política. Acostumbrados a mandar con ardor y a ser obedecidos sin réplica, se detienen poco en las formalidades establecidas para la administración de justicia, tan necesarias para conservar el derecho de las partes. Este sistema hace odiosos a algunos que no conocen que el interés del gobierno debe ser el bien público y que jamás haya este progreso en la industria ni en las artes mientras no tenga amor y confianza en el que gobierna, y ha entibiado los ánimos y aplicación de estos isleños que por su carácter piden un gobierno dulce y moderado. Cualquiera que sea la causa, la isla está muy lejos de tener el feliz estado que podría haber adquirido bajo el mando de Gobernadores ilustres y patrióti.cos, siendo aun hoy muy gravosa al estado, cuando podía y debía uti-

70. A few minor changes, like restricting the term of office of the tenientes a guerra to two years and
royal treasury affairs are separated from the governorship, to be entrusted to a high official, the Intendente, appointed by the King.

While no fundamental change in appellate procedure is registered at this time, an important event to be noticed is the transfer of the audiencia of Santo Domingo, still the court of appeals for Puerto Rico, Louisiana, and Florida, to Puerto Príncipe, Cuba, in 1800. For about thirty more years, Puerto Rican cases would have to be taken to an intermediate court of appeals in another island. When created, the audiencia of Puerto Rico would profit by another important event that happened in the eighteenth century: the establishment in 1776 of the position of Regente of the Audiencia, a position comparable to that of a Chief Justice in the North American system. The Regente was to preside over the oidores, or associate justices, of the audiencia, a function exclusively per-

somewhat enlarging their jurisdiction, occur.

71 This Tribunal de Real Hacienda, composed of the governor, as its president, the Asesor, a treasurer, and an Auditor. The court was, at the same time, an administrative agency entrusted with the collection of duties and the payment of troops, among other matters.

72 This was brought about by the cession of Santo Domingo to France in 1795, the treaty signed in that year taking effect in 1800.
formed up to then by the governor. The governor remained as presidente of the audiencia but, although he still had to sign all decisions of the tribunal before they could have any legal effect, his position from then on was largely nominal. A complete separation, however, of the judiciary and the executive was not achieved in the Spanish colonies until 1861.


The slow tempo of the preceding centuries begins to be altered in this period. Against a background of wars and constitutional changes - the war of Spain against the Bonapartes, the Spanish American wars of independence, the Spanish constitution of 1812 - the old institutions begin to be reshaped and revived, new institutions are established, and Puerto Rican life enters a new, although not a prosperous, nor even a very enlightened, phase. The lack of significant changes in the social, political, and economic life of the Island in the preceding two and a half centuries greatly contrasts with the number of reforms carried out, particularly in the judicial field, during

73. On October 24, 1803, the signature of the regent was made sufficient to validate all orders and decisions of the audiencia, in case of absence of the governor. Absences of the governor had caused serious delays in the administration of justice.
the nineteenth century. The significance of the period from 1800-1815, in relation to the rest of the nineteenth century, lies chiefly in its having laid the basis for a good part of the reforms to follow. It provides the link between the long, transitional, middle colonial period and the era from 1815 to the end of the nineteenth century, which witnesses the coming of age of Puerto Rican society.

A period of crisis was reached in 1810, when the Mexican war of independence cut off the situado. This forced the Spanish government squarely to face the problem of our dying economy. The first direct effort to provide for commercial expansion of the Island was embodied in a law of 1815, the so-called Cédula de Gracias, which ushered in a new period in the economic field, as well as in the field of the administration of justice, the latter a somewhat short-lived affair. Early in the nineteenth century, the Island was subdivided into five judicial districts, instead of the original two, with alcaldes ordinarios, as before, at the head of each district and tenientes a guerra as heads of the towns in which each district was
subdivided. The Cádula de Gracias brought about at the beginning of the next period, and for the purposes of its enforcement, a subdivision of the island into six judicial districts, headed by six judges (tenientes justicia mayores) of a category higher than that of the Alcaldes Ordinarios, which were supplanted for a short time by the tenientes justicia mayores.

The questioning of judicial institutions is, indeed, a mark of this period. Prior to the enactment of the Cádula de Gracias, the system of tenientes a guerra had

75. This subdivision happened in 1802, pursuant to the royal cádula of January 14, 1778 (see section 8 of this chapter). The districts were: San Juan, Arecibo, Aguada, San Germán y Coamo. A sixth one (Humacao) was added in 1816 and a seventh (Caguas) in 1825. The judicial districts at the time of the American occupation were seven (San Juan, Arecibo, Aguadilla, Mayagüez, Ponce, Guayama, and Humacao). Such a division dated back to February 27, 1846. (V.: Coll y Toste, C., Note, in Boletín Histórico de Puerto Rico 103.) In the hundred years that have elapsed since that date, two more districts have been added (Bayamón, created in 1930, and Caguas, created in 1943). Note how the 1846 system of judicial districts headed by Alcaldías Ordinarias, roughly corresponding then to the present district courts, is closely adhered to in 1947 in spite of the tremendous change in transportation facilities in the intervening century. For suggestions as to the advisability of reversing this tendency to create more and more courts, see the chapter on suggested reforms.

76. The tenientes justicia mayores were established by an Auto Acordado of January 2, 1816, a highly interesting document which shows the growing dissatisfaction with the organization of courts at that time, particularly
been severely criticized. On their abolishment, alcaldes ordinarios were placed, in 1814, at the head of each town. The jurisdiction of these minor officials was substantially the same as that of the tenientes a guerra. This system was not to last long. Up to 1855, in fact, the Spanish government was to show great indecision as to the organization of the lower tribunals and the government of small towns in Puerto Rico. The competing choices were mainly between the system of tenientes a guerra, subordinated to a few alcaldes ordinarios in regard to the performance of judicial functions, and the system, as seen for the first

as respects the institution of the Tenientes a Guerra, as to which it is said:....."El Régimen interior y Administración de Justicia se ha fiado hasta ahora a una especie de jueces pedáneos llamados tenientes a guerra, siendo preciso elegirlos entre los mismos vecinos dispersos en los campos, por lo común sujetos, que aunque sean de la mejor intención, carecen de cultura y conocimientos para penetrarse del espíritu de las órdenes superiores y saber cumplirlas, ligándoles además los naturales y comunes enlaces y conexiones." (The document is reprinted in 14 Boletín Histórico de Puerto Rico 10.)

The system of tenientes justicias mayores only lasted nine months. It was later put again into operation and in 1831, the time of the establishment of an audiencia in Puerto Rico, we find it finally superseded by a system of Alcaldes Mayores. The judicial posts of Alcaldes Ordinarios and of Tenientes a guerra suffered even greater vicissitudes over a longer period, from 1812 to 1855. (See footnote 79.)

77. V. Cédula of October 22, 1814.
78. V. Instrucción a los Alcaldes Ordinarios, dictated by
time in 1814, of alcaldes ordinarios in every town, subordinated, more or less directly (excepting the alcaldes ordinarios of the four villas), to the Governor. 79

Whether one or the other system prevailed affected the powers of a new important official, the Intendente, who makes his appearance in 1811. 80 The Intendente, who was appointed directly by the King and entrusted with the administration of economic affairs in the Island, a function performed up to then by the governor, had to be consulted by the latter as to the appointment of Alcaldes Ordinarios to the pueblos (the alcaldes of the villas were still elected by the municipal council, as in previous centuries). As it may be remembered, the tenientes a guerra were appointed by the governor alone. 81

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79. Governor Meléndez on October 22, 1814. 13 Boletín Histórico de Puerto Rico 309.
80. The tenientes a guerra, for example, obtain the upper hand soon after 1814, but are again suppressed in 1820. They are reinstated in 1827, to be suppressed in 1836 and again reinstated in 1845. They finally disappear in 1855. By this time, municipal courts have appeared, greatly reducing the significance of the mayor's courts, which continue to the end of the century.
81. The first Intendente did not take office until February 12, 1813.

A more complicated method of appointment was introduced in 1831. From that time on, the Alcaldes Mayores, created on that year, submitted six names to the audiencia for each appointment. The audiencia selected three out of the six, and submitted them to the governor, who finally chose the official from these three.
More than half of the history of Puerto Rico is engulfed in this gigantic void of the middle colonial period. The handful of men who inhabited the island at the middle of the sixteenth century numbered in 1815 close to two hundred thousand people; the two original towns developed into slightly over fifty communities. The expansion in population, which now constitutes one of our greatest worries, was not accompanied by any corresponding increase in material wealth. The island went on relief during the sixteenth century and the end is not yet in sight. No advances were made in cultural wealth either. The first printing press to come to the island arrived as late as the first decade of the nineteenth century. The first faintly literary work appeared a few years later. Literature as such was not to be born until the second half of the nineteenth century. Efforts to found a university, a privilege enjoyed, among the Antilles, by Santo Domingo since the sixteenth century (1539 and 1541) and by Cuba since the eighteenth (1725), were to prove unsuccessful until the twentieth century.

To summarize, the judicial system at work during the
middle colonial period was an essentially simple one, as demanded by such a small and undeveloped community and the need felt by the bankrupt Spanish Treasury to curtail expenses. The trial work was performed by the same persons wielding the political power, tenientes a guerra in the towns and alcaldes ordinarios in the villas. The system did not allow, as a rule, for more than one appeal: to the municipal council of the villa at the head of the judicial district or, in more important cases, to the governor himself who, as justicia mayor, was the judge of highest rank in the island. His judicial duties were mostly performed, however, by an adviser appointed by the King. In important cases, an appeal might be had to the audiencia of Santo Domingo, later located in Puerto Príncipe, and finally, in a few other cases, to the Council of the Indies, the supreme tribunal in the Spanish colonial judiciary.

The selection of judges was generally made by appointment. The oidores of the audiencia, the governor, and the Asesor were all appointed by the King, with the advice of the Council of Indies. The minor judges were either appointed by the governor alone, by the governor together with
the intendente, or by the municipal council, the members
of which were elected by the people. Both the alcalde
ordinarios and the tenientes a guerra, the latter only
since the last third of the eighteenth century, held of-

tice for a specified number of years, never more than
two. All judges were lay magistrates; some were paid a
salary, others were supported by fees. All sat singly at
trials; the tribunal colegiado was a product of the later
colonial period.

The figure of the governor clearly dominates the
whole middle colonial period, as he did the formative
stage (the period from 1537 to 1550 excepted). The ad-
ministration of justice in the island of Puerto Rico was
at that time, to a very large extent, an executive task.
The cabildos, the asesor, the intendente and the oidores
from neighbouring Santo Domingo fought to keep it from
being a one-man show, but there were times when their ef-
forts failed.

The prevalence during this period of the personal
conception of the administration of justice, as apposed
to the territorial conception (the same set of laws for
all classes of people within a nation, instead of a different set of laws for each different class), should also be noted. The nobility, the clergy, and the military had to be tried in a manner different from that prescribed for ordinary civil and criminal causes. Special ecclesiastical and military courts, applying different bodies of law, were set up early in the period.

D. The later colonial period: 1816-1898


The Spanish American wars of independence (1810-1824) brought about an awakening of Puerto Rican society and the realization by Spain of the need for revising its colonial policy. Such a revision, however, did not take the form of allowing the remaining colonies a greater measure of self-government -- that was too foreign to Spanish thought. The revision was made along the lines of tightening even more the Spanish hold over all phases of governmental activity in the islands. The result was an even greater absolutism than that experienced in the preceding centuries. The powers of the governor were greatly extended in 1825, opening one of the blackest periods of undemocratic rule.
in Puerto Rico, 83 a period which lasts for forty-five
dishheartening years. Even when the Spanish Constitution
of 1812, which had been extended to Puerto Rico for a
brief spell soon after its adoption, was again proclaimed
by the Spanish people in 1836, the Spanish Cortes refused
to extend it to Cuba, the Philippines and Puerto Rico,
simply enacting that "the colonies shall be governed by
special laws." A bright note during this period of veritable
martial rule -- softened, in the judicial field, by
the presence of a Puerto Rican audiencia-- is the num-
ber of judicial reforms effected. The reforms are of two
types. First, the judicial system of Puerto Rico was brought
up to date (establishment of an audiencia and a system of
Alcaldes Mayores, which will be discussed in the next sec-
tion); the changes that then follow correspond, as a rule,
to contemporaneous changes in the Spanish judicial system
itself.

From 1825 to about 1870 two contradictory tendencies
may thus be seen at work in Puerto Rican society: a ten-
dency to push the powers of the governor to dictatorial
proportions, in order that any effort of the remaining
83. The governor of Puerto Rico was invested in May, 1825,
colonies to follow the path of the American republics might be quickly suppressed; side by side with a tendency to create an independent judiciary. As a result of such a situation, frequent clashes occurred between the governor and the audiencia, in which the latter emerged as the stronger. A number of governors who tried to interfere with the work of the audiencia were summarily deposed. The end of the nineteenth century sees a strong governor, but also a very strong judiciary.

During the period from 1816 to 1830, the dissatisfaction with the prevailing judicial system, a feeling we saw appearing in the period from 1800 to 1815, deepens. Indecision still prevails as to whether small towns shall have their judicial work performed by tenientes a guerra, as in the previous centuries, or by alcaldes ordinarios, following the pattern of the bigger towns, or villas. At the beginning of the period (in 1816), an experiment was tried to which we have already referred, the establishment of tenientes justicias mayores. This was a change with the extraordinary powers conferred upon the commanders of fortresses held in siege.

85. V. Footnote 79.
86. See section 9 and footnote 76.
chiefly important as a mark of dissatisfaction with the system of alcaldes ordinarios, and also in that it helped to pave the way for the reforms of 1831. Besides their judicial duties, the tenientes justicias mayores were entrusted with enforcement of the economic program launched in the Cádula de Gracias. There were six in the island, one for each judicial district formerly presided by alcaldes ordinarios. They had to be lawyers, the first time such a requirement was imposed upon holders of judicial office in Puerto Rico. That only six tenientes justicias mayores were required for the whole island was a lucky thing, for there were only eight lawyers in Puerto Rico at that time. The appointment of tenientes justicias mayores did not entail any substantial change in jurisdiction. The system was abolished before a year had elapsed, reestablished years later and definitely superseded by a system of Alcaldes Mayores in 1831.

Although a true commercial court, as known to the Spanish system, was not fully established in Puerto Rico until 1833, this period witnesses the development of one

87. Brau, S.: Historia de Puerto Rico, 1904, pp. 228-229. The present number is close to a thousand.
rudimentary such court. \textsuperscript{87a}


In 1831 opens one of the most significant periods in the history of the organization of courts in Puerto Rico under Spanish rule. After having had its judicial system run for more than three centuries by a handful of judges occupying the lowest rank in the Spanish scale, and depending for its important appellate work on the audiencias of other islands, Puerto Rico gets a higher rank of judges to work in the Island itself and ceases to be subordinated to the audiencia of Puerto Príncipe. The creation of a \textit{Real Audiencia} in Puerto Rico had been urged since the beginning of the nineteenth century. The Island came very close to getting one in 1810 when, revolution having broken out in Venezuela, the Spanish government actually ordered the establishment of a provisional audiencia in Puerto Rico. \textsuperscript{88} The order was never carried

\textsuperscript{87a} The commercial court or consulado was composed entirely of merchants. It had original jurisdiction over most matters concerning commerce. An appeal was provided to the audiencia (first to the governor, in former times). A rudimentary consulado was established at San Juan in 1813. Its powers were considerably increased in 1824. Mexico and Lima had had consulados since 1593 and 1594, respectively.

An auditor's office, independent of the \textit{Tribunal de Cuentas} of Havana is also established in this period (1828). \textsuperscript{88} Consult: Malagón Barceló, J.: \textit{El distrito de la
out and an audiencia was not established in Puerto Rico until 1831. The audiencia of Puerto Rico followed the same pattern as other Spanish American audiencias. It was chiefly an appellate tribunal, but had original jurisdiction in a few cases as, for instance, crimes committed by high judicial officers. An important characteristic of the judicial system prevalent in the later colonial period is, in fact, the great supervisory powers that this highest tribunal in the Island could exercise over the lower courts. The oidores were authorized to require the inferior judges to report on the work of their courts and could admonish, fine or indict them if the work was not held by the audiencia to be satisfactorily performed. By unanimous action of the oidores, a criminal case could be removed from the court having jurisdiction and assigned to another court. The governor of Puerto Rico was, ex officio, president of the audiencia but, as has been remarked, he had no

89. See audiencia de Santo Domingo en los siglos XVI al XIX, 1942, pp. 66-7.

89. The audiencia was established by Real Cédula of June 2, 1831. Actual work of the tribunal did not begin until July 23, 1832. The above cédula appears among the documents collected in 2 Boletín Histórico de Puerto Rico, at page 286. The audiencia was composed at first chiefly of a president (the governor himself), a Regente, three oidores (justices) and a district attorney.

90. See section 8.
voice in the decisions of the tribunal, except in mat-
ters relating to the government of the Island, after
the position of Regente was created in 1778 in the colo-
nial audiencias. The greater accessibility of appeals,
the difficulties of appealing a case to a court in an-
other island being removed, proved, in fact, an effec-
tive check on abuses of discretion by the governor and
the lower courts.

A second reform, carried out at the same time was
the creation of a system of Alcaldías Mayores in the is-
land. 92 These Alcaldías Mayores were courts of first
instance with a larger jurisdiction than that of the
Alcaldías Ordinarias which, from now on, play a dimi-
ishing role in the judicial system. 93 The number of

91. The cédula of June 2, 1831, creating the audiencia
and the Alcaldías Mayores, acknowledges the defects
of the previous judicial system: "Debiendo llevarse
las apelaciones al tribunal superior del distri-
to, esto es, a mi Real Audiencia de Cuba, ha suce-
dido no pocas veces, por las mismas causas y obstácu-
os, que los puertorriqueños han tenido que renunciar a los
remedios legales, viendo perecer su justicia en los
fallos de primera instancia, con el desconsuelo de no
obtener acaso su desagravio, ni al que sean reprimidos
los desaciertos de los jueces locales."

92. Created by the same cédula of June 2, 1831.

93. The mayor's courts, direct descendants of the Alcaldías
Ordinarias and the Tenencias de Guerra, continue until
the end of the century. See footnote 112.
Alcaldías Mayores created was six, with one judge in charge of each. Interestingly enough, the judicial district comprising the capital of the Island was left in charge of the governor and his Asesor. The governor, it may be remembered, bore the judicial rank of Alcalde Mayor since the early times of the colonization. The reforms of 1831 thus bring to the island two higher levels of officials whose duties are essentially judicial in nature, if not absolutely so: the alcaldes mayores (no longer represented by the chief executive alone) and the oidores.

The alcaldes mayores were appointed by the King for a term of five years. Their salary, as well as that of the oidores, who, of course, were also royal appointees, was paid by the Spanish government. The law required that after their five years on the bench expired, the alcaldes mayores be either promoted or transferred. This brings out another characteristic of the Spanish judicial system which only becomes significant at this time as respects the Puerto Rican system: the organization of the judiciary.

94. The six courts of first instance were established at Humacao, Coamo, Caguas, San Germán, Aguada, and Arecibo.
95. Recommendations were made to the King by the Department of Justice (Departamento de Gracia y Justicia), the Council of Indies serving at first as advisor to the Department.
as a separate profession subject to detailed rules as to promotions and transfers. Puerto Rican judges being all, up to this time, lay, inferior, magistrates, they in no way constituted part of the established judicial profession as such. Only when alcaldes mayores and oidor
gavas, who had to be lawyers, came to the Island, was Puerto Rico brought within the system of transfers and promotions to which the whole Spanish judiciary was subject. The professionalization of the judiciary, together with the establishment of elaborate plans for promotion, is also a well-known trait of the judicial systems of France and Germany. The office of public prosecutor was also organized along lines similar to the French parquet.

The organization of courts in Puerto Rico, as it stood in 1832, was, therefore, as follows: Justice in the small towns was administered by tenientes a guerra, with jurisdiction up to 100 pesos in civil matters, and criminal jurisdiction over some minor offenses. In old towns entitled to a cabildo, or municipal council (there

96. The tenientes justicias mayores known earlier were not, to my knowledge, subject to that system.
98. They were to be substituted by alcaldes ordinarios in 1836. See footnote 79.
were two at this time), the minor judges were still the
Alcaldes Ordinarios who, now that there were more law-
yers in the Island, had the help of a legal adviser.
The civil and criminal jurisdiction of the Alcaldes Or-
dinarios was now the same, within their district, as the
tenientes a guerra. Both types of magistrates were selec-
ted the same way as in previous centuries: the tenientes
a guerra were appointed by the governor, and the alcaldes
ordinarios elected by the municipal council. Both were
supported by fees. No appeal could ordinarily be had against
a judgment of an alcaldé ordinario or a teniente a guerra,
but a party could argue the nullity of the proceedings
before the audiencia (the writ was known as the Recurso de
Nulidad). Civil and criminal matters over which the minor
courts had no jurisdiction were tried in the first instance
by the Alcaldes Mayores. Jurisdiction in the second and
third instances was exercised by the audiencia. The
third instance before the audiencia, a step suppressed
some thirty years later, consisted of a motion to reconsider
laid before a different chamber of the tribunal, which
usually consisted of two chambers. A further characteris-
tic shared with other European systems was that the court
of first instance itself, besides the parties to the suit, could ask the appellate tribunal to review a case. The office of the public prosecutor could also, as a rule, perform that function.

Cases involving a high jurisdictional amount could be appealed further to the Council of Indies. Upon the reorganization of the Spanish courts in 1834, the Council of Castile, the highest court in Spain proper, and the Council of the Indies, the highest colonial tribunal, also sitting at Madrid, were abolished and a Supreme Court of Spain and the Indies (Tribunal Supremo de España e Indias) created. Upon this Supreme Court were vested only the judicial functions of the Council of Castile and the Council of Indies. The highly important administrative functions of those two bodies were vested in a newly created Council of Spain and the Indies. 99

A number of other tribunals also existed at this time. The main ones were an ecclesiastical court, a naval

99. The Royal Council of Spain and the Indies was suppressed soon afterward and, in 1845, the Council of State, through a special Ministry of Overseas Possessions, took charge of Indian affairs.

100. It was a bishop's court. Four minor ecclesiastical tribunals or Vicariats in the Island had jurisdiction to take the preliminary steps in the cases, which then had
court, an army court, a treasury court, and a consulado. Probate jurisdiction was exercised, since early times, by a separate court.

Jurisdictional clashes among the different courts could generally be decided, up to 1838, by the governor.

In 1838, the governor was shorn of this power and a special court was set up in Puerto Rico (similar ones to be forwarded to the bishop's court. Appeal could be had to the archbishop's court in Cuba and, further, to the Tribunal de la Nota de la Nunciatura Apostólica, at Madrid.

101. The commandant of marine heard cases in the first instance, aided by a legal adviser, whose opinions he was bound to follow, a relation similar to that between the governor and the Asesor. All appeals went to the admiral stationed at Havana.

102. The army court was composed at this time of two important magistrates: the Captain-General and the Auditor de Guerra. Throughout most of Puerto Rican history, the captain-generalship and the governorship were held by the same official. The auditor de guerra was also a justice of the audiencia. Cases heard in the army court could be appealed to the audiencia of Puerto Rico and, further, to the Supreme Court of Spain and the Indies.

103. The treasury court consisted chiefly of a judge and a prosecutor. Its judgments could be appealed to the audiencia and, further, to the Supreme Court of Spain and the Indies, which functioned in this and other instances as a court of cassation.

104. The consulado consisted of three lay magistrates, two of which were nominated by the parties in dispute. The permanent judge, the Consul, was appointed by the King. For the development of this court in 1866, see Adela, J. J., notes to Abbad y Laierra's Historia geográfica, civil, y natural de la isla de San Juan Bautista de Puerto Rico, 267 et ff. This consulado only exercised jurisdiction over the judicial district.
were established by the Spanish government in Cuba and the Philippines at the same time to decide all jurisdictional disputes among courts not having a common superior tribunal. This Junta Superior de Competencias, or Superior Jurisdictional Court, was composed of five members: the chief justice of the audiencia (the Regente), the senior associate justice, the Auditor de Guerra (the army judge), the auditor de marina, and the advisor (Asesor) to the Treasury. Jurisdictional questions between the courts of Cuba and Puerto Rico were decided by the peninsular Supreme Court, later by the audiencia of Havana. 107

Two other important events that happened during this interesting period were the abolition in 1835 of the post of judicial advisor (Asesor) to the governor, 108 which indicates that the governor plays a much less important role from now on in judicial affairs, and the founding in

of San Juan. The commercial jurisdiction was exercised throughout the rest of the island by the alcaldes mayores. The decisions of the consulado and of the alcaldes mayores could be reviewed by the audiencia and, if a high jurisdictional amount was involved, by the Supreme Court of Spain and the Indies.

105. Very important cases went to a Spanish court especially set up for the purpose: the Tribunal de Competencias.
106. Royal Order of December 8, 1837.
107. Conflicts between the Cuban and the Puerto Rican courts were, since 1855, to be decided by the audiencia of Havana, which was of higher rank than that of Puerto Rico.
108. See section 8.
1840 of the Bar Association of Puerto Rico. 109


The movement toward the separation of judicial and executive functions within the governmental structure of the island, which we saw starting in 1831 with the establishment of the audiencia and the system of alcaldes mayores, attains full maturity in the last half of the nineteenth century. Several major reorganizations of the judicial system take place in this period, more than six in the years from 1855 to 1891. 110 Only the vital changes will be discussed and then the system as it emerges in 1891, to last until the American occupation, will be described.

One of the most important features of the reorganization of January 30, 1855, 111 is the restriction, to a much greater degree than known before, of alcaldes mayores (also known in this period as jueces ordinarios de partido and, finally, as jueces de primera instancia) to the performance of strictly judicial functions, roughly equivalent to 109. Also to be noted is the abolition of the probate court (juzgado general de bienes de difuntos) on February 10, 1894. 1 Boletín de la Revista de Legislación y Jurisprudencia 97. Probate jurisdiction was vested by this law on the alcaldes mayores.

110. The main dates are: 1855, 1861, 1865, 1868, 1870,
to the functions of the present district court judges.

Formerly, as has been already remarked, they were in charge of most of the governmental functions in their district. The government of each town is from now on more the concern of its mayor (alcalde), whose importance in the judicial system of the Island is greatly diminished. 112 The jurisdiction of the alcaldes mayores remains as described in the previous section.

The separate organization of the office of Public Prosecutor (the Ministerio Público), equivalent to the French parquet, also dates back to 1855. 113 A representative of the Ministerio Público was only attached at first to the audiencia but by 1884 the courts of first instance and the municipal courts had also such representatives.

A fourth set of courts, besides the then existing

111. 3 Boletín de la Revista de Legislación y Jurisprudencia (cited from now on as BBY) 147.

112. The former tenientes a guerra disappear in this period and a system of alcaldes ordinarios is imposed (see footnote 79). The modern municipal regime, under Spanish rule, dates from the municipal law of August 28, 1870. The judicial functions formerly exercised by tenientes a guerra and alcaldes ordinarios come soon to be vested in the municipal judges. The mayor still retains jurisdiction, however, over some minor offenses (mainly violation of local ordinances and
mayor's courts, courts of first instance, and audiencia, also gets started about this time. These were the municipal courts, with civil and criminal jurisdiction similar to that exercised by the alcaldes ordinarios in the middle colonial period. 114

The powers of the audiencia are also extended in 1855 by suppression of the Superior Jurisdictional Court, whose functions are performed from then on by the audiencia. 115

Other important reforms take place in 1861. This is the year in which the governor of Puerto Rico ceases to be president of the audiencia and the last obstacle to the separation of the judicial branch from the executive is removed. 116 A further step towards the creation of a strictly judicial body, as conceived under the doctrine of the separation of powers, was the abolition of the Acuerdo in executive decrees) until the end of the century, a hangover from the judicial system of the middle colonial period. See footnote 93.

113. The pertinent laws are those of January 30, 1855, 3 HIEL 147; October 1, 1859, 11 HIEL 315; and May 2, 1869, 30 HIEL 539.

114. A law of October 22, 1855, 3 HIEL 353, sets up these courts in the towns entitled to a municipal council. The system of municipal judges (also known as justices of the peace within the Spanish colonial system) is not well established until the end of 1865, when the Spanish Law of Civil Procedure (adopted on May 13, 1855) is extended to Puerto Rico (December 9, 1865). The jurisdiction of these courts is described in detail in pp. 235-6. of this chapter.
the same year. The *acuerdo* ("agreement") was the device used since colonial times to require the agreement of both the governor and the audiencia in the exercise of many important administrative and legislative functions.\(^{117}\) Since 1861, the colonial audiencias could no longer share in those extra-judicial activities.

Important for the study of colonial administrative law, as well as for the history of the organization of courts in Puerto Rico, is the creation, also in 1861, of an Administrative Council (*Consejo de Administración*).\(^{118}\) The Administrative Council was given exclusive jurisdiction over actions arising out of contracts with the government, tort actions arising out of the execution of public works, and tax cases. Some members of the Council were *ex officio* members (the Governor, who presided it, the Bishop, the Intendente, the regente of the audiencia, the fiscal, and

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115. Arts. 51 and 98 of the judiciary law of January 30, 1855, 3 BRLJ 147. As to the Superior Jurisdictional Court, see section 11.
116. Royal Decree of July 4, 1861, art. 4, 15 BRLJ 65. Art. 7 empowers the Regente to give legal force to a judgment by attaching his signature, without the signature of the governor, often an irksome requirement, being no longer needed.
117. V. Solórzano Pereira: *Política Indiana* (1776), Vol. 2, 271-9, for an account of the acuerdo. Also see: Cunningham, C.H.: *The audiencia in the Spanish Colonies* (1919), p. 91, footnote 37, and chapter VI, dealing with the general relations between the audiencia
the president of the Tribunal de Cuentas); others, up to twelve, were appointed by the King.

Further changes occur in 1865, with the extension to Puerto Rico of the then prevailing Spanish law of Civil Procedure. Besides definitely establishing a system of municipal courts, reference to which has already been made, the new law abolished the third instance in appeals to the audiencia and reformed the procedure regulating appeals from the audiencia of Puerto Rico to the Supreme Court of Spain. Up to 1865, the colonial cassation procedure had differed from the peninsular system in that no jurisdictional amount was required in the latter in order for an appeal to be allowed. In 1865 the colonial law is made to conform to peninsular procedure, and the Supreme Court of Spain, functioning as a court of cassation, is vested with jurisdiction, irrespective of the amount involved, over cases in which judgment by the audiencia violates either an express statute or a doctrine and the governor. (The acuerdo was abolished by art. 1 of the Law of July 4, 1861, 15 BRIL 65).

118. Royal Decree of July 4, 1861, 15 BRIL 65. The Administrative Council was composed of three divisions: the treasury and the government divisions, and the division of controversies (división de lo contencioso).

119. See footnote 87a.

120. See footnote 114.
which, up to then, had been acknowledged, in the absence of a statute, by the courts of the realm. 121 This remained the appellate practice in the later colonial period until the Supreme Court lost jurisdiction over the courts of Puerto Rico in 1898.

The territorial conception of the administration of justice, as opposed to the personal conception, had been gaining ground during the first half of the later colonial period. 122 The year 1868 marks the extension of the powers of the ordinary tribunals and the decline of the special courts formerly entrusted with the trial of certain classes of people. 123 From then on, cases involving soldiers, sailors and clergymen were to be tried in the ordinary courts, although certain specific offenses could only be tried in the army, the navy, or the ecclesiastical courts. The treasury court and the commercial courts were abolished at this date. The courts of first instance and the Council of Administration gained jurisdiction over most of these cases. The Council of

121. See the Royal Decree of December 9, 1855, 23 BRLJ 728.
122. See art. 94 of the law of January 30, 1855. 3 BRLJ 147.
123. Law of December 6, 1868, 29 BRLJ 737. This measure had been a fighting measure of Spanish constitutions. It had been embodied in article 248 of the famous Constitution of 1812, as well as in the Constitutions of 1837 and 1855. Its triumph was not settled until 1868.
Administration was reorganized in 1869 and its contentious-administrative jurisdiction was vested in the audiencia. A new Council of Administration, composed this time of only three members (the Chief Justice of the audiencia and two special advisors), was created in 1875.

A further step towards an independent judiciary was the virtual consecration of the principle of irremovability of judges (chiefly, judges of first instance and justices of the audiencia) in a law of 1870. In the course of the same year, a new municipal law came into effect. A Provincial Delegation (Diputación Provincial) was vested with exclusive jurisdiction to determine which towns were entitled to a municipal council and to which judicial district should a given municipality belong, as well as to decide whether a given municipality should be suppressed or not. An appeal could be had from the decisions of the Provincial Delegation to the ordinary courts or to the Council of Administration, as the case might be.

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124. Royal Decree of February 7, 1869, 30 BBLJ 601.
125. Royal Decree of March 19, 1875, 46 BBLJ 527. Its functions were somewhat more limited because of the Provincial Delegation created in 1870.
126. Royal Decree of October 25, 1870, 34 BBLJ 549. See also the Royal Decree of April 12, 1875, 46 BBLJ 547.
The members of the municipal councils were elected for a term of two years. The mayor, or alcalde, was elected by the municipal council, as in previous centuries.

Two other important features of the colonial judicial system as it stood before 1898 were added in 1888: a statistics service and the criminal audiencias. 127

The creation of the statistics service 128 (Servicio de Estadísticas), which was entrusted with functions not unlike those exercised by the office of the Administrator of United States Courts, although more limited in scope, signifies the added importance given in the final stages of the later colonial period to the business aspect of the administration of justice.

The criminal audiencias were vested with most of the criminal jurisdiction previously vested in the courts of first instance. The municipal courts still retained jurisdiction over minor offenses (faltas); the mayor's courts continued to exercise jurisdiction over offenses such as the violation of ordinances and executive decrees. The

127. Discussion of the reorganizations of April 12, 1875, 46 BBLJ 947, and January 15, 1884, 72 BBLJ 177 is omitted, as they did not add much to the basic outlines of the system. The latter law, it should be noted, definitely fixes the jurisdiction of the municipal courts.

128. Created by Royal Decree of October 26, 1888, 84 BBLJ 62. It was attached to the Dirección General de Gracia y Justicia (Justice Division) of the Ministry of Overseas Possessions.
courts of first instance retained only such powers in
criminal matters as needed "to make the preliminary exami­
nation in the causes and to institute such other proceed­
ings as referred to them by the audiencias". 129 All other
criminal jurisdiction was vested in the criminal audien­
cias, 130 of which there were three at the time of the
American occupation in 1898.

The final compilation of the judiciary laws of the
colonies (applying to the Philippines, Cuba, and Puerto
Rico) was made in 1891. 131 The following was the orga­
nization of courts in Puerto Rico at the end of Spanish
rule.

There were five main sets of courts in Puerto Rico
in 1898: mayor's courts, municipal courts, courts of first
instance, criminal audiencias and the territorial audi­
cia. As pointed out before, the mayor's courts, which
played such an important part in the formative era of the
system, and during all of the middle colonial period, now
play a less significant role. Its jurisdiction was limited

129. Art. 48, Royal Decree of October 26, 1888, 82 REAL 62;
Art. 185 of the Royal Decree of January 5, 1891.
130. The territorial audiencia retained criminal jurisdic­
tion over crimes committed in the exercise of their
functions, by: a) the provincial deputies, b) the
members of the municipal council in the towns where
an audiencia is located, c) the administrative autho­
rities of such towns, the civil and military governors
excepted.
131. Royal Decree of January 5, 1891.
to violations of local ordinances and executive decrees.

No appeal was allowed as a matter of course but a writ of "responsibility" (Recurso de Responsabilidad) was allowed before the territorial audiencia in case of improper conduct by the judge. This, however, was rather an impeachment proceeding, and not a true appeal. The municipal courts, of which there was one for each municipality, were presided over by a single judge who, like the mayor, was not required to be a lawyer. Municipal judges were appointed for terms of two years by the president (chief justice) of the audiencia, a commendable feature.

The president of the audiencia was called to make the appointment out of three names selected by the judges of first instance. The municipal judges were supported by fees. The civil jurisdiction of the municipal courts was limited to 30 pesos (about $18) in towns having no higher court; in towns where a court of first instance sat, the civil jurisdiction was only 20 pesos. The municipal

132. The schedule of fees is set forth in 72 E.R.R. 184 (1884).

133. Efforts to arrange the suit amicably were first to be made by the municipal judge who, in such instances, had jurisdiction over cases amounting up to 200 pesos ($120). If the parties refused to settle the suit in court, jurisdiction over the suit was automatically acquired by the corresponding court of first instance. Preliminary rulings in testamentary matters or intestate
courts were also vested with jurisdiction over some minor criminal offenses. The municipal judges could also be charged by the courts of first instance with the carrying out of auxiliary commissions. Judgments in civil matters within the jurisdiction of municipal courts were not open to appeal, but the infrequent Recurso de Responsabilidad before the audiencia, which hardly could take place of an appeal, was also available. Judgments in criminal matters could be appealed, however, to the jueces de instrucción, whose chief functions were to serve as committing magistrates.

The general trial jurisdiction in civil matters was exercised by twelve courts of first instance (also known as courts of instruction). Their civil jurisdiction extended over all matters outside the jurisdiction of the mayor's and the municipal courts. Judges of first instance served only as committing magistrates in criminal cases. There was one judge to each court. They were successions could also be dictated by municipal judges.

134. The pertinent provisions are scattered over the criminal code then prevailing.
135. That office was often joined with that of judge of first instance.
appointed by the King and were required to be lawyers. They belonged to the hierarchy of professional judges characteristic of the Spanish, French, and German systems. Once they were admitted to the judicial profession, they remained there for life, unless convicted of misconduct. Candidates admitted to the judicial profession were eligible to appointment to either the bench or office of fiscal or public prosecutor. Once appointed to the bench a judge could become a public prosecutor, and vice versa. All judicial and district attorney positions bore a certain rank in the judicial scale, periodic promotions being a fundamental principle of the system. Judges of first instance could be transferred in four main cases: 1) once they had served eight years in the same town; 2) when either they or their relatives acquired immovables in the town they were serving; 3) on account of serious differences with other judges; and 4) on recommendation of the audiencia, with good cause. They could be permanently separated from the service if the Government determined that the official was meddling in politics or on the commission of certain crimes. Provision for suspension was

136. For other requirements, see footnote 67.
also made. The retirement age was sixty-five (seventy in the case of higher judges). The oidores of the territorial audiencia and the alcaldes del crimen (jueces) of the criminal audiencias were, of course, also subject to all of these provisions. 137

The three criminal audiencias were each composed of three judges. Each audiencia exercised original jurisdiction over all criminal causes arising in its district, except certain minor offenses, jurisdiction of which was committed to the municipal courts and to the mayor, and the limited criminal jurisdiction of the territorial audiencia. 138 The criminal audiencias exercised no appellate jurisdiction whatsoever. All appeals from decisions by a criminal audiencia went directly to the Supreme Court of Spain, functioning as a court of cassation.

The powers of the territorial audiencia remained fundamentally the same as when established in 1831. Originally composed of three justices, it numbered seven in 1898. It was the supreme civil court of the island, as well as the only court of second instance. It could hear in first instance complaints against inferior judges (recursos de

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137. Article 147 of the Royal Decree of January 5, 1891.
138. See footnote 130.
responsabilidad. Appeals from its decisions lay only to the Supreme Court of Spain.

To summarize, we have seen how the unrest experienced in the first three decades of the nineteenth century, with its general questioning of institutions, has led to reorganizations of the system during the later colonial period. The period is indeed marked by a spirit of reform, a spirit painfully absent during the middle colonial stage. The later colonial period sees the decline of the governor as the principal figure in the judicial system and, finally, his total banishment from the judiciary. The increase in dictatorial powers accorded to the governor (1825-1870) was not strong enough to prevent the development of the judiciary as a separate branch of the government, the most significant event of the period. Since the middle of the nineteenth century, the judicial scene is clearly dominated by the audiencia and the courts of first instance, although clashes with the governor are not infrequent.

During the later colonial period, the judicial system also moves towards greater centralization. In view of the very limited jurisdiction of the municipal and the
mayor's courts, most of the trial business devolves upon a few courts of first instance. A glimpse of the principle of unification of courts is also achieved through the close supervision of lower tribunals by the audiencia. The business aspect of court work is also given attention by the creation of a statistics service, located at Madrid. Throughout the whole history of Spanish rule in Puerto Rico, judicial affairs are strictly controlled by the central Spanish government. The only control left to the people of Puerto Rico as such was over the mayor's courts. The municipal courts were very much under the control of the audiencia, which was appointed in toto, together with the personnel of the courts of first instance, by the Spanish government.

Other events of the later colonial period that stand out in the preceding discussion are the appearance of separate criminal courts and of a court to try cases to which the government is a party—a characteristic of both the French and the Spanish systems; the disappearance of most of the early courts of special jurisdiction, and the establishment of a system of life appointment to the bench or the parquet, together with an elaborate system of promotions.
13. General characteristics of the judicial system at the end of Spanish rule.

The judicial system of Puerto Rico waged throughout its first four hundred years a bitter fight for independence. The confusion that prevailed between judicial and executive functions until the middle of the later colonial period is highlighted by the vesting, since the formative stage, of all jurisdiction, at least theoretically, in the governor of the Island who, for the greater part of four centuries, is the most important judicial figure of Puerto Rico. To offset the influence of the governor, an awkward set of checks and balances is established, by which judicial power is diffused through numerous, often competing, institutions (the cabildo, the alcaldías ordinaria, the ASESOR, the Intendente, the courts of special jurisdiction, the audiencia of Santo Domingo). The corresponding failure fully to place responsibility on a given institution or official is a mark of the Spanish colonial system throughout most of its history. Once the audiencia is established in 1831, however, the judicial branch quickly becomes a separate branch of government. So far as respects the relation between the judiciary and the executive
the Spanish colonial system arrives near the end of the
nineteenth century to an application of the theory of
the separation of powers close to the Anglo-American con-
ception. The transition from the Spanish judicial tra-
dition to the American tradition was to be made easier
by the similar conception in the two systems, of the ad-
ministration of justice as a separate function of govern-
ment, a conception backed by a much longer history and
secured by much stronger roots in the Anglo-American tra-
dition.

Belief in a fundamentally simple scheme of courts
is another trait of the Spanish colonial system as estab-
lished in Puerto Rico. Its culmination is reached at the
end of the nineteenth century, with the disappearance of
most of the courts of special jurisdiction. Only three
major sets of courts are known at that time: municipal
courts, courts of first instance, and the audiencias. A
fourth set, the mayor's courts, constituted a survival
of earlier periods, and had little significance in the
second half of the nineteenth century. The utmost simpi-
city was attained in appellate procedure. Only the most
important civil cases could be appealed twice, once to
the Supreme Court of Spain, which functioned as a court of cassation. Minor civil causes could not be appealed at all as a matter of right, but a writ of improper conduct, as against a trial judge, could be filed before the territorial audiencia. Criminal cases could be appealed but once, to the Supreme Court of Spain. Most criminal causes had to be tried in special criminal courts, the so-called criminal audiencias. Cases to which the government was a party were tried in a separate administrative court, and could be appealed to the Spanish Council of Administration, the supreme tribunal in Spain and the colonies for administrative matters. This separate scheme of administrative courts is also a feature of the French and German systems.

As to the procedure for the selection of judges, devotion to the principle of appointment, as opposed to the unsatisfactory principle of election of judges, prevailed. The closest the Spanish colonial system got to election of judges was in the case of alcaldes ordinarios (mayors), who were elected by the members of the municipal council, who were themselves elected by the people. Tenientes a guerra, municipal judges, alcaldes mayores (later judges
of first instance), and justices of the audiencia were all appointed, either by the King, the governor, or the audiencia. The governor had power to appoint the tenientes a guerra; the audiencia could appoint the municipal judges; all others were royal appointees.

The tenure of judges was for short terms (alcaldes ordinares, tenientes a guerra since 1770, municipal judges, and alcaldes mayores) or on good behavior (tenientes a guerra up to 1770, oidores). Finally, a system of life appointment to the judiciary was developed, which comprised judges of first instance and justices of the audiencia. Appointees held a given position for a specific number of years, after which they were either promoted or transferred. Municipal judges and mayors continued to hold office for short terms. All judicial offices, as well as positions in the Parquet, had to be filled by lawyers at the end of the nineteenth century, except the office of mayor or of municipal judge. Prior to 1816, the only judicial post which only lawyers could hold was that of Asesor to the governor, which was not considered to be, although in practice it was, a judicial position.

A number of good features can easily be recognized
in the above outline, simplicity of court organization and of appellate procedure, suitable provisions, for the most part, regarding the selection and tenure of judges. Although this court system did not achieve such a degree of unification as that attained in England in the last quarter of the nineteenth century, it was, nevertheless, reaching for some of the benefits to be derived from such a theory of court organization. The whole judicial system of Puerto Rico, as well as other parts of the government structure, were fatally marred, however, by the great defect of Spanish colonial policy: its determination that not even the slightest degree of self-government was to be allowed the colonies. 139 Not until early in the nineteenth century is Puerto Rico accorded, for a very brief period, representation in the Spanish Cortes; continuous representation not being enjoyed by the Island until the last twenty-eight years of Spanish rule. The inhabitants of Puerto Rico thus had little to say about the administration of justice in their own Island and for four hundred years lived without the power to effect even minor reforms.

139. A famous decree of November 26, 1897, accorded Puerto Rico some degree of autonomy, but this never came into effect.
in their judicial and political systems. That such a situation is poorly calculated to foster the keen understanding and sound criticism of political and judicial institutions needed to enhance their effectiveness and vitality can hardly be denied. Puerto Rican colonial institutions were never made to be part of the people, were never allowed to grow as part of the people, they were always something foreign, imposed from without, often lacking the popular support needed to accomplish their work successfully. Having never been allowed to work things out for themselves, Puerto Ricans developed, in those four centuries of inertia, a general attitude of indifference toward their own problems that further hindered the work of social reform. It is only in recent years that a general awakening has been experienced and that earnest, sustained efforts have been made to solve our own problems and share our own responsibilities.

This may explain the general dissatisfaction, as accounts of the time reveal, with the judicial system as it stood near the end of the nineteenth century. Even though, if considered in vacuo, the judicial system of the island may possibly be described as a fairly adequate
one at that time, it was doomed to failure by its undemocratic basis, by its inability, as a foreign body, to blend itself with the desires of the people, to make itself a part of the people.
CHAPTER X

THE ORGANIZATION OF COURTS UNDER AMERICAN RULE

A. The period of military government.

On April 25, 1898, a state of war was declared by Congress to exist between the United States and Spain. A few months later, on July 25, American troops landed in Puerto Rico and soon obtained control of the island. The period of military government extends from October 18, 1898 to June 30, 1906. 1

No substantial changes were effected in the insular laws from July 25 to October 18, 1898. A circular letter issued by the commanding officer of the occupation forces stated:

"The municipal laws, in so far as they affect the private rights of persons and property and provide for the punishment of crime, should be continued in force as far as they are compatible with the new order of things, and should not be suspended unless absolutely necessary to accomplish the objects of the present military occupation. These laws should be administered by the ordinary tribunals substantially as they were before the occupation." 2

1. Actual cession of Puerto Rico to the United States was effected by Article II of the Treaty of Paris of August 12, 1898, ratified on April 11, 1899. Military operations were suspended on August 13, 1898.
The first change in the existing organization of courts occurred on October 18, 1898. General Orders No. 1, of that date, vested jurisdiction in courts-martial or military commissions over crimes or offences committed by any United States soldier or persons serving with the army, by any inhabitant or temporary resident of the Island. General Orders No. 1 also restated the principles set forth in the Circular Letter of July 29, 1898, besides providing for the appointment and removal of officials:

"The provincial and municipal laws, in so far as they affect the settlement of the private rights of persons and property and provide for the punishment of crime, will be enforced unless they are incompatible with the changed conditions of Porto Rico, in which event they may be suspended by the department commander. They will be administered substantially as they were before the cession to the United States. For this purpose the judges and all other officials connected with the administration of justice who accept allegiance to the United States will administer the laws of the land as between man and man, but in cases of the non-acceptance of such allegiances, or malfeasance in office, or for other cause, the department commander will exercise his right of removal and the appointment of other officials."

General Orders #4 of October 27, 1898, effected a
more permanent change. It abolished to a large extent a distinguishing feature of the Insular court system as it stood in 1898: the contentious-administrative court. Cases involving the government were from then on to be handled mostly by the ordinary civil courts.

In the same month a new insular Supreme Court was created superseding the old territorial audiencia. The new court consisted of six associate justices and one chief justice. The number of justices was later to be reduced to five. All appeals formerly heard by the Supreme Court of Spain were to be heard by the insular court of Puerto Rico, sitting in banc. No fundamental change in civil procedure was effected until much later, nor did the Supreme Court of Puerto Rico become a true court of appeal, as distinguished from a court of cassation, until 1903.

3. For the history of the contentious-administrative court, see pp. 229–232 of the preceding chapter.
5. V.: General Orders #, October 26, 1898.
6. A supreme court of seven justices has been recently recommended by the insular Department of Justice.
7. General Orders #19, December 2, 1898.
Early in 1899, a reorganization of the executive branch of the insular government was carried out which affected the administration of justice on the Island. 8 As a part of this reorganization a Department of Justice was created, a step so much sought in many States of the Union, entrusted with the general administration of justice, the appointment of judges and notaries, the regulation of judicial appeals, and the running and supervision of penal establishments. 9 A few months afterwards, however, the Department of Justice was divested of all control over the courts. General Orders #98 of July 15, 1899, specified:

"The department will hereafter be charged only with duties similar to those which pertain to the Department of Justice and the office of the Attorney-General in the United States and in the several states of the Union, such as rendering opinions on contracts to which the insular government is a party, investigating claims against the insular government, prosecuting officials of the insular government for malfeasance in office, investigating titles to public lands, interpretation of laws for the guidance of the executive departments, supervising prosecuting attorneys in the various insular courts, etc."

8. General Orders #12, February 6, 1899.
The Department of Justice itself was placed by General Orders #98 under the direction and control of a judicial board of five members. The main duties of the judicial board were "to receive from the solicitor-general all reports, opinions, and recommendations which he may submit and transmit them, with their remarks, to the governor-general.... to propose to the governor-general from time to time such reforms in the laws and in the procedure of the courts as they may deem wise.... and to present to the supreme court, through its fiscal, articles of impeachment against any judge of an insular court (except a justice of the supreme court) against whom they may receive charges of corruption or malfeasance in office...." The judicial board was soon abolished upon the establishment of civil government, and its powers reverted to the Department of Justice.

The beginnings of the present federal district court for Puerto Rico were also had in 1899. Known as the United States Provisional Court for the Department of Puerto Rico, its jurisdiction extended to all cases which were properly cognizable by the circuit or district courts of the United States. The decisions of the Provisional Court
were to follow the principles of common law and equity "as established by courts of the United States." Application for a writ certiorari could be made directly to the United States Supreme Court.

In the summer of 1899, a thorough reorganization of the judicial system of the Island was finally attempted.\(^\text{10}\) The main remaining courts of the old system were abolished including the criminal audiencias and the courts of instruction and first instance, and new district and municipal courts established. The Island was divided into five judicial districts, with one district court and several municipal courts for each of them. Each district court had three judges all of whom were required to be lawyers. Each municipal court consisted of a municipal judge and two associates; the former was appointed by the Governor, but the latter two were drawn by lot, one from a list of academically competent persons, and the other from a list of taxpayers. The municipal courts were entrusted with criminal jurisdiction over all misdemeanors and civil jurisdiction over cases involv-

\(^{10}\) V. General Orders, #114 and #118 of August 7, 1899, and August 16, 1899, respectively.
ing claims up to $400. An appeal to the district court could be had as a matter of right in any case, but no suit heard before a municipal court could be appealed to the insular Supreme Court.

The last change in the judiciary carried out during the occupation was the short-lived attempt to create police courts in each town and city having a municipal court. They were to have exclusive jurisdiction over a number of contraventions. No appeal could be had from their decisions. The police courts were suppressed, together with the mayor's courts -- the last survival of the old system -- by an Act of March 1, 1902. Since 1902, the minor judiciary of Puerto Rico was to be composed of municipal and justice of the peace courts.

Most of the basic features of the present judicial structure of Puerto Rico are thus the product of the military occupation. The three main types of courts in the present system -- municipal courts, district courts, and the Supreme Court -- are organized, as we have seen, during the period of the military occupation. As respects

II. General Orders #195, November 29, 1899. This order allowed the alcaldes to act as police judges. By Act of January 31, 1901, "to provide for the organization of police courts in the Island of Puerto Rico", the posts of alcaldes and police judge were separated.
court organization proper, the break with the past is not too sharp, as these three sets of courts, typical of American judicial systems, roughly correspond to the municipal courts, courts of first instance, and territorial audiencia of the Spanish colonial system. The judicial structure is thus kept fairly simple, the military reformers refraining from incorporating into the insular system such an undesirable feature as the intermediate courts of appeal of some States. Other advanced features of the later colonial period are kept, such as maintenance of a judicial statistics service (in charge of the insular Department of Justice), a unified bar, machinery for the supervision of the business aspect of court organization, limited appeals, and the practice of appointing, not electing, judges. This latter characteristic of the old system later suffered some modifications which, fortunately, did not last for long.

12. The Bar Association of Puerto Rico, founded in 1840, was authorized by General Order #20, 1898, to resume its existence. It did not again enjoy its privileges, under the old charter, of compulsory membership and a stamp duty to insure ample revenue until insular Act, No. 43 of May 14, 1932 reestablished them.

Civil government under American rule began in Puerto Rico upon approval by Congress on April 12, 1900, of "An Act temporarily to provide revenues and a civil government for Porto Rico, and for other purposes," 14 known as the Foraker Act. Section 33 of that Act read:

"That the judicial power shall be vested in the courts and tribunals of Porto Rico as already established and now in operation, including municipal courts, under and by virtue of General Orders, numbered One Hundred and Eighteen, as promulgated by Brigadier-General Davis, United States Volunteers, August sixteenth, eighteen hundred and ninety-nine, and including also the police courts established by General Orders, numbered One Hundred and Ninety-five, promulgated November twenty-ninth, eighteen hundred and ninety-nine, by Brigadier-General Davis, United States Volunteers, and the laws and ordinances of Porto Rico and the municipalities thereof in force, so far as the same are not in conflict here-with, all which courts and tribunals are here-by continued. The jurisdiction of said courts and the form of procedure in them, and the various officials and attaches thereof, respectively, shall be the same as defined and prescribed in and by said laws and ordinances, and said General Orders Numbered One Hundred and Eighteen and One Hundred and Ninety-five, until otherwise provided by law. Provided, however, That the chief justice and associate justices of the supreme courts and the marshal thereof shall be appointed by the President, by and with the consent of the Senate, and the judges of the district courts shall be appointed by the governor, by and with

14. 31 Stat. 77.
the consent of the executive council, and
all other officials and attachés of all
the other courts shall be chosen as may be
directed by the legislative assembly, which
shall have authority to legislate from time
to time as it may see fit with respect to
said courts, and any others which they may
deem advisable to establish, their organiza-
tion the number of judges and officials and
attachés for each, their jurisdiction, their
procedure, and all other matters affecting
them."

The Foraker Act also created the District Court of
the United States for Puerto Rico 15 in charge of a
district judge appointed by the President by and with
the advice and consent of the Senate of the United States,
for a term of four years. This court was to have jurisdic-
tion of all cases cognizant in the circuit courts of
the United States. Writs of errors and appeals from the
final decisions of the Supreme Court of Puerto Rico and
the District Court of the United States for Puerto Rico
could be taken directly to the Supreme Court of the United
States, 16 in contrast with the later Act of Congress

15. See section 34.
v. Martin, 192 US 149, 24 Sup. Ct. 247 (1904) it was
held that Congress did not intend that any connection
should exist between the District Court of the United
States for Puerto Rico and any circuit court of ap-
peals established under the Act of 1891 (26 Stat. 826).
which sets up the Circuit Court of Appeals for the First Circuit as an intermediate court of appeals. 17

The Foraker Act is but a step towards the final shaping of the present system. As has been seen, it mainly continues the court organization of the last stage of military government, fixes the number of justices of the Supreme Court, their method of appointment, the method of appointment of the insular district judges, and allows the Legislative Assembly of Puerto Rico authority to legislate with respect to the existing courts and any others that such Legislative Assembly may deem advisable to establish. The powers granted by the Foraker Act to the local legislature to reorganize the local judiciary were put to test in Kent v. Porto Rico, 207 US 113, 52 L. Ed. 127 (1907), which case upheld the great powers vested by section 33 of the Foraker Act on the Legislative Assembly of Puerto Rico with respect to judicial organization.

Under both the Foraker Act and the present Organic Act, 18 Puerto Rico has, in fact, enjoyed ample powers to determine its judicial structure, powers which, unfortunately, have

17. 39 Stat 961 (1917), section 42.
An important change in the judicial system is effected in 1902 by the Code of Criminal Procedure enacted on March 1 of that year. Title I of the Code abolishes the police courts of the Island and creates a system of justices of the peace courts, which constitute from then on a permanent part of our court organization. Justices of the peace were to be appointed under this Code by the Governor of Puerto Rico, by and with the consent of the Executive Council. The term was two years.

Original jurisdiction was to be exercised in all cases of misdemeanors wherein the fine that could be imposed would not exceed two hundred and fifty dollars or when the imprisonment in jail would not exceed six months. Justices of the peace were paid a fixed salary (maximum: $100 per month in the larger cities), payable out of the municipal treasury. An appeal to an appropriate district court could be had from any decision rendered by a justice of the peace. The proceedings before the district court took the form of a trial de novo.

19. Revised Statutes and Codes of Porto Rico. 1902, p. 621. This Code of Criminal Procedure follows closely that of California.
A Political Code is also enacted on March 1, 1902 by the Legislative Assembly of Puerto Rico. Chapter III of the Political Code is of the utmost importance in that it provides the source of the Attorney General’s powers over the insular courts. Section 65 of the Political Code provides:

"The Attorney General shall supervise the administrative affairs of the courts of the island; the appointment and removal of secretaries, clerks, and other officials and employees shall not become effective until approved by him; the accounts by secretaries and other officials of moneys disbursed, including fees, to witnesses, jurors, medical and other experts, shall be submitted to the Attorney General for his approval after they have first been approved by the presiding judge of the court. Upon the request of the Attorney General the several courts of the island shall render general reports relating to the business disposed of and pending, and such other reports as may be requested relating to their internal administration of affairs. The Attorney General may establish general rules for the formation by the courts of separate calendars of criminal and civil cases and for the prompt disposal thereof."

Thus a general statistics service has been maintained since early in this century by the office of the Attorney General, which has also been able to serve as a general coordinating center for the administration of court business. This is, in fact, one of the more advanced features

of our judicial system. Although the need for a more
efficient handling of the business aspect of court
organization has been stressed by almost all modern
writers on judicial administration, most states have
as yet failed to give adequate attention to this prob-
lem. As has been indicated before, an administrative
office is not provided for the federal judiciary itself
until 1939. 22 Although in the insular Department of
Justice Puerto Rico has the beginnings of a modern admi-
nistrative office for the courts, there is still much
room for improvement, as will be later discussed.

On March 10, 1904, the Legislative Assembly enacted
a Judiciary Act which marks the culmination of the reform
movements started in 1898. 23 This Act divided the island
into seven judicial districts, chiefly along the same
lines of early Spanish legislation. The only change ef-
fected in this respect since that time has been the addi-
tion, in 1930 and in 1943, of two new districts. 24 Only

22. 53 Stat. 1223.
23. "An Act reorganizing the judiciary of Porto Rico, deter-
mining the number of judicial districts, providing
that one judge shall constitute a court to take cog-
nizance of all cases and fixing the salary of the jud-
ges. To create municipal courts and defining their
powers, jurisdiction and salary of the judges, and
providing an executive officer for the name, and for
other purposes." 1904 Laws, p.
24. Act #57 of April 28, 1930, creates the District Court
one judge, instead of the former three, was assigned to each district court. When some municipal and district courts were later subdivided into sections, the principle that cases should be heard by only one judge has been normally followed. 25 Besides these seven district courts, twenty-four municipal courts were created in the 1904 reorganization. While district judges were appointed by the Governor, 26 as required by the Foraker Act, the position of municipal judge was made elective. The appointive method of selecting judges was, fortunately, soon to replace the elective method introduced by the 1904 Judiciary Act.

Justice of the peace courts were also created by the 1904 Judiciary Act in almost all the municipalities of the island. The justices of the peace were to be appointed by the Governor with the consent of the Executive Council, 27

of the Judicial District of Bayamón; Act #156 of May 14, 1943, creates the District Court of the Judicial District of Caguas.

25. In matters vested, in the opinion of the judges, with extraordinary public importance, some district courts are allowed to organize into a Tribunal in Banc. See: section 9 of Act #212, approved March 26, 1946, creating the Tribunal of the Judicial District of San Juan.

26. The 1904 Judiciary Act fixed the term of district judges at four years.

27. The Executive Council constituted the upper house of the Insular Legislature up to 1917.
for the short term of one year. They were entitled to
an annual salary of $360, payable out of municipal funds.
All fines imposed were to be paid over to the municipality.
The jurisdiction of the justice of the peace courts ex­tended to minor offenses entailing a fine no larger than
fifteen dollars and imprisonment for a term no longer than
thirty days besides cases involving a violation of a munici­
pal ordinance. Commenting upon the fact that justice
of the peace courts had been left without any civil juris­
diction, the then Attorney General termed it "probably
the result of a mistake." 29 If a mistake it was, it has
been a mistake for quite some time now, as justice of the
peace courts today still hold no jurisdiction over civil
matters.
Municipal courts held criminal jurisdiction over mis­
demeanors only and civil jurisdiction over cases involv­
ing up to five hundred dollars, an increase of one hundred
dollars. This is, basically, the jurisdiction of municipal
courts today. As to appellate procedure, the 1904 Judi­
ciary Act is silent.

28. All other judges, including municipal judges, were
paid out of insular funds.
Governor of Puerto Rico -- 1903-04, page 35.
The year 1904 also sees the final abolition of all contentious-administrative jurisdiction and the granting of some rule-making powers to the Supreme Court.

Already in 1907 there are signs of a growing dissatisfaction with the organization of courts in Puerto Rico, particularly the municipal courts, as established by the 1904 Judiciary Act. When a new municipal court was established in Vieques, the Legislature was careful to make the office of municipal judge appointive. The then Attorney General wrote at that time:

"The judicial officers in all the other municipal districts are elected by popular vote. An exception was made of the Vieques court because it was believed that a more efficient judiciary could be obtained for the island by removing the court officials from the field of active politics." A fairly clear view was thus had at that time in Puerto Rico of the evil of selection of judges by election. Other problems of the administration of justice, however, are still met through inadequate formulas.

"Experience has shown", again wrote the Attorney General in

30. 1904 Laws, p. 133. See also: General Orders #4, of October 27, 1898.
31. Title I, section 8 of the Code of Civil Procedure.
1907, "that the present system of municipal courts is unsatisfactory. It does not afford the people the speedy judicial remedy to which they are entitled. Many of the municipal judicial districts include within their respective limits more than one municipality, in each of which the court is required to hold sessions... These difficulties could be overcome in a very great measure if each municipality were given a court with a fixed residence. I earnestly advocate the reorganization of the municipal courts on a basis that will provide one court for each municipality.

The justice courts might well be abolished and the jurisdiction now exercised by them conferred on the municipal courts." 33 Forty years later, we still meet the view that problems of court organization may be solved simply by creating more courts and appointing more judges.

Senate Bill 932, filed on March 31, 1947, in the Legislature of Puerto Rico embodies the same philosophy and follows exactly the same recommendation made by the Attorney General in 1907. Senate Bill 932 was the product of a special committee representing the Legislature and the Office of the Attorney General, besides the Bench and Bar of Puerto Rico. The appropriation required by the

33. ibid. p. 49.
bill, however, signified such a substantial increase in the cost of administering justice in Puerto Rico that it could be stopped in time.

A significant step towards a better judicial system was taken in 1909, when the facilities for gathering judicial statistics by the Office of the Attorney General were greatly improved. An Act of March 11 of that year creates a Bureau of Judicial and Criminal statistics in the Department of Justice. The Attorney General was given power to require all courts, as well as municipal offices and departments of the insular government, to supply the necessary information to allow the compilation of adequate data showing the work of the courts. Annual statistics have been published by the Attorney General ever since. Insufficient staffing of the division of the Attorney General's Office entrusted with this work, as well as inadequate methods of research, account for the comparatively little influence these statistics have exerted in the way of bringing about a thorough and scientific reorganization of the courts. Further development, and a better use, of this important part of a judicial system

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34. 1909 Laws, p. 230.
Attention to the need of providing a suitable method for the retirement of judges is first given in 1911. Act #71, approved on March 9, 1911, provided that the justices of the Supreme Court of Puerto Rico "having uninterruptedly held office in said court for at least fifteen years, and upon reaching the age of sixty-five, may tender their resignation of office and will thereafter receive, during their natural life...three-fourths of the salary which the law accorded them during their incumbency." The need of making adequate provision also for the retirement of members of the minor judiciary and of district court judges was not yet recognized.

Prior to the enactment by Congress in 1917 of a new Organic Act for Puerto Rico, just one other change in the judicial system needs be mentioned: the establishment of juvenile courts. Insular Act #37, approved May 11, 1915, created in each of the judicial districts of the

Prior to 1898, what we have called the professionalization of the judicial career allowed for a uniform system of retirement.

1918 Laws, pp. 227-228. The number of years of service was reduced from fifteen to ten by Act #9, approved February 28, 1913.
island a juvenile court "which shall have within its
district exclusive original jurisdiction of all cases
of juvenile delinquency and dependency and cases con­
tributing thereto, and of all cases arising under the laws
for the protection of children." The juvenile courts
established by Act 37, which Act still constitutes the
law in effect, were separate courts only in name. The
judge of the Juvenile court is the district judge him­
self. All that Act 37 of 1915 established is a different
procedure for the adjudication of cases involving child­
ren under sixteen years of age. Our juvenile courts are
in no way specialized tribunals with the techniques and
the specialized personnel needed to handle the acute prob­
lem of juvenile delinquency.

C. Civil government under the Jones Act.

38. Section 40 of the Jones Act reads:

"That the judicial power shall be vested
in the courts and tribunals of Puerto Rico
now established and in operation under and by
virtue of existing laws. The jurisdiction of
said courts and the form of procedure in them,

37. Section 1 of the Act.
and the various officers and attachés thereof, shall also continue to be as now provided until otherwise provided by law; Provided, however, That the Chief Justice and Associate Justices of the Supreme Court shall be appointed by the President, by and with the consent of the Senate of the United States, and the Legislature of Puerto Rico shall have authority, from time to time, as it may see fit, not inconsistent with this Act, to organize, modify, or rearrange the courts and their jurisdiction and procedure, except the District Court of the United States for Puerto Rico."

Ample power is thus given to the Legislature of Puerto Rico to reorganize the insular court system. In spite of the growing dissatisfaction with the administration of justice in the island, no attempt has been made, however, at using the power vested in the Legislature by section 40 of the Organic Act thoroughly to reorganize the insular judicial system. The general trend in the last thirty years has been the old, familiar one of creating more courts and more judges.

Two new district courts are created during this period, adding to a total of nine. The number of municipal courts is raised from thirty-four to thirty-

39. See footnote 24, supra. A law of the 1947 legislature creating another one was vetoed by the Governor.
seven. A look at the number of municipal and district judges in 1917 and in 1947 is more revealing. There were in 1917 eight district judges and thirty-five municipal judges, as compared to seventeen district judges and forty-six municipal judges at present. The number of justices of the peace and justice of the peace courts changes slightly, from fifty-six to fifty-eight. The Supreme Court continues to be composed of one chief justice and four associate justices, as specified in the Organic Act, during the same period. During the early thirties, the Department of Justice repeatedly recommends a substantial reduction in the number of municipal courts. One Attorney General recommends that the number of municipal courts be reduced to twenty. All efforts to stem the tide fail.

The jurisdiction of the different courts remains the same. The justice of the peace courts continue to exercise criminal jurisdiction over minor offenses entailing a fine no larger than fifteen dollars or imprisonment up to thirty days, or both. Justices of the peace continue

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40. See the Reports of the Attorney General for the years 1930-31, 1931-32, 1933-34 and 1934-35.
to act as committing magistrates too. The justice of the peace courts still exercise no civil jurisdiction whatever.

The municipal courts exercise civil jurisdiction only over claims not exceeding five hundred dollars, including interest. Criminal jurisdiction is limited to misdemeanors, although municipal judges can act as committing magistrates in felony cases. The district courts continue to be the courts of general trial jurisdiction.

Appeals may be taken as a matter of course from a justice of the peace court to the appropriate municipal court. In such event, the case is heard de novo at the municipal court. An appeal may be had from any case decided by a municipal court to the corresponding district court. The case must then be tried de novo in the district court. All criminal cases decided, originally or on appeal from a municipal court, by the district courts may be appealed to the insular Supreme Court. All civil cases originally decided by a district court may also be thus appealed; if the case was originally tried in the municipal court and then appealed to the district court it may be further appealed to the Supreme Court if a sum larger than three hundred dollars, including interest, is involved.
Since 1915, an appeal may be taken from the Supreme Court of Puerto Rico to the Circuit Court of Appeals for the First Circuit, in the same manner, under the same regulations, and in the same classes of cases, in which units of errors and appeals from the final judgements and decrees of the highest court of a State in which a decision in the suit could be had, may be taken and prosecuted to the Supreme Court of the United States.\textsuperscript{42} Revision may further be had before the Supreme Court of the United States.

The uniform method of selecting judges in Puerto Rico today is by appointment. Justices of the peace are appointed by the Governor, by and with the consent of the insular Senate, for a term of four years, unless sooner removed for cause by the Governor. Justices of the peace are not required to be lawyers. They are paid, out of the Insular Treasury, and according to the size of the town where they hold office, a salary of $900, $1050, or $1200 a year.

Judges of municipal courts are also appointed by the Governor, by and with the consent of the Senate, for a term of four years, unless sooner removed for cause.

\textsuperscript{42} See: 38 Stat. 803
They are required to be lawyers, over twenty-five years of age, and must have practiced their profession for at least five years in the case of judges appointed to the Municipal Court of San Juan. They are paid either $3,000, $3,500 or $4,200 a year, depending on the size of the municipality. 43

District court judges are also appointed in the same way as justices of the peace and municipal court judges, but for a term of ten years, except judges of the district court of San Juan and district judges at-large, who are appointed for a term of twelve years. District court judges must also be lawyers, admitted to the Bar of the Supreme Court of Puerto Rico, and over twenty-five years of age. Judges appointed to district court of San Juan must also have practiced the legal profession for at least ten years. District court judges may be removed by the Governor upon recommendation of the Supreme Court of Puerto Rico. 44 District court judges are paid an annual salary of $7,000, except the district judges at-large and the judges of the district court of San Juan, who earn $7,200. 45

43. A municipal judicial district in Puerto Rico usually includes a large rural area and several towns. In this sense, our municipal courts correspond rather to the American county courts.
44. As to the procedure to be followed by the Supreme Court in removal proceedings, see: Act. No. 58, approved April 29, 1930.
45. These salaries, fixed in 1947, constitute a substantial increase from the former salaries.
Justices of the Supreme Court are appointed by the President of the United States and hold office during good behaviour. Their salary is $10,000, the Chief Justice earning $10,500.

Retirement laws cover every member of the insular judiciary. Justices of the peace and municipal judges come under the provisions of the general retirement law for insular government employees. 46 This law, which is of mandatory application, establishes a minimum age of retirement of fifty years for female or fifty-five years for male employees, or completion of thirty years of service. No provision for compulsory retirement is made, except in cases of physical disability. The amount of benefit is 2% per year of contributing service, plus 1 1/2% per year of non-contributing service, based on the average salary of the last eight years of service. The maximum amount of benefit per year is fixed at 75% of the average salary for the last ten years of service.

46. Act No. 23, approved July 16, 1935. This act is far from adequate. Its revision has been undertaken, at the instance of the Puerto Rican government, by the Public Administration Service. A mimeographed report Employee Retirement in the Insular Government of Puerto Rico, Public Administration Service, Chicago, 1946, 27 pp., was submitted in 1947 to the Legislature of Puerto Rico.
not to exceed $1,500; no minimum amount of benefit per year is provided for. Disability provisions establish the same rate as for retirement benefits; they are conditioned on completion of fifteen years of service. This pension fund is financed by contributions by members of 3% of their salary and annual appropriations of $200,000.

District court judges are covered by a separate retirement law, 47 which provides a life income of three-fourths of the salary which the judge might be earning on the date of retirement. Judges who reach the age of sixty years and who have rendered services in the judicial branch of the government for at least twenty years are entitled to retire from the service, as well as judges who reach the age of fifty-five and who have rendered at least twenty-five years of service, and judges who, irrespective of their age, have rendered at least thirty years of service. Every district court judge who is, for any reason except removal, involuntarily separated from office after twenty years of service is also entitled to the same retirement benefits. This retirement plan is totally financed by the Insular Government, which fact is rightly

criticised by the Public Administration Service, the plan being "discriminatory in providing a higher rate of pension to a favored group of public employees, at no cost to the employee." 48

A separate law applies to justices of the Supreme Court 49, who are entitled to three-fourths of their salary 50 as retirement benefit after they have served in the Supreme Court for at least twenty consecutive years, provided they have reached the age of sixty years, or after they have served ten consecutive years, having reached sixty-five years of age. Justices of the Supreme Court are also entitled to retirement benefits in case they become physically disabled or mentally incapacitated to discharge their duties.

An administrative office for the insular courts, developed in its present form during the preceding period, but which also existed during the later colonial period,

48.- **Employee Retirement in the Insular Government of Puerto Rico, 1946, p. 90.**

49.- **Act. No. 64, approved May 8, 1937.**

50.- **Associate Justices earn a yearly salary of $10,000; the Chief Justice earns $10,500.**
continues to be a feature of the Puerto Rican judicial system under the Jones Act. Section 14 of this Act specifies that "the Attorney General shall have charge of the administration of justice in Porto Rico". Although section 14 allows for a more ambitious administrative office, with much wider and important powers, than the one outlined in section 65 of the Political Code, quoted earlier in this chapter, the Administrative Office of the Courts, attached to the Office of the Attorney General, has not fully availed itself of its great powers. Valuable work has been rendered, however, by the Office of the Attorney General in the handling of the business aspect of court organization in matters like the keeping of accounts, disbursement of moneys, appointment and supervision of the clerical force, and gathering of data on the condition of the dockets. Puerto Rico is in this respect one of the few American communities where great attention has been devoted to the business aspect of court organization.

51.- The Foraker Act did not entrust the Office of the Attorney General with the administration of justice. The local legislature, in section 65 of the Political Code, vested him, though, with supervisory powers over the administrative affairs of the insular courts.
The opportunity further to perfect this feature of the insular system through fuller use of section 14 of the Organic Act should not be wasted.

Through the continued efforts of the insular Department of Justice, a judicial council is established in Puerto Rico in 1939. The Judicial Council of Puerto Rico is composed of eleven members: the Chief Justice of the Supreme Court (ex officio); an associate justice of the Supreme Court, designated by the Chief Justice; two district court judges and one municipal court judge, all to be appointed by the Governor; the chairman of the Committee on the Judiciary of the Senate and the chairman of the Civil Judiciary Committee of the House of Representatives (both ex officio); the Attorney-General (ex officio), who may be represented by

52. - Suggestions for the extension in this respect of activities of the Office of the Attorney General, or of a Ministry of Justice, are made in the next chapter.

53. - The recommendation that a judicial council be created in Puerto Rico is first made in the Report of the Attorney General, 1935-34, p. 10, where the functions of such a body are described as "the continuous study of the organization, rules, and methods of procedure in practice in the judicial system of the island."

any Assistant Attorney-General that he may designate; and
three members of the bar, who are appointed by the Board of
Directors of the Bar Association.

Except the legislators, who are appointed for the
duration of their elective offices, the members of the
council are appointed for two years, or until their succes-
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sors are appointed. The secretary of the council must be
elected from among its members. In view of the experience
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of other judicial councils it seems advisable that this
provision should be amended to allow for appointment of a
full or part-time secretary. No member of the council
receives any compensation for his services.

Section three of the Act establishing the judicial
council specifies that it "is created for the continuous
study of the entire judicial system of Puerto Rico, of its
organization and regulation, and of the advisability of
establishing methods of procedure and practice or of re-
organizing the judicial system in any way, as well as

55. - The limitation of the Chief Justice's term to two
years is, obviously, an oversight that should be
corrected. Consideration should also be given to the
advisability of appointing the Dean of the Law School
of the insular university as a member of the judicial
council.

56. - See Pirsig, op. cit., at page 983.
to study the results of any legislation enacted for said purpose." Annual reports are to be rendered to the Governor and the Legislature "on the work of the several depend­encies of the judicial system."

The work of the Judicial Council was particularly fruitful during the first few years after its creation. The Judicial Council earnestly advocated the granting of ample rule-making powers to the Supreme Court of Puerto Rico, which resulted in Act No. 9 of April 5, 1941, to the desired effect. This Act led to the adoption by the Supreme Court of Puerto Rico of the Federal Rules of Civil Procedure, which went into effect on September 1, 1943, and which, of course, constituted a heartening advance in the field of procedural reform. The Judicial Council also sponsored an act creating the office of public defender in the district courts.


58. Act No. 91, approved April 29, 1940. See: Judicial Council of Puerto Rico, Annual Reports to the Governor and to the Legislative Assembly, 1941, P. R. comment­ing on Johnson v. Fernandez, 304 U.S. 458 and Ex parte Hernandez Lauriano, 54 P.R.R. 396, which prompted the Act.
Since 1941, no important contribution to judicial administration has been made by the Judicial Council. The meetings in the last six years have been very few, two whole years having at times elapsed between meetings. The view unfortunately developed, after 1941, among members of the judicial council that the main function of such a body is not to initiate independent studies of the judicial system, but to advise the Governor on such bills affecting the administration of justice as he may deem advisable to refer to the Council. That the Judicial Council is supposed to be much more than an advisory body to the Governor may readily be gathered from section three quoted in an earlier paragraph, of the Act creating the council. The main function of a judicial council within our judicial system should be the creation of a better judicial system. Independent and continuous study by the judicial council of the different aspects of court organization and procedure, with a view to suggesting the necessary reforms is, of course, indispensable for the achievement of that end.

59. A major cause of the failure of the Judicial Council in the period from 1941 to 1946 also was the serious rift between the Governor of Puerto Rico and the Chief Justice of the Supreme Court.

60. See pp. 170-1, supra.
The Judicial Council of Puerto Rico is in this respect in an enviable position in that the gathering of statistical data on the work of the courts -- which must be done by the judicial council itself in many American jurisdictions -- is the job of the Administrative Office for the insular courts, in the Office of the Attorney-General, which facilitates the task of evaluating the work of the different branches of the judiciary. The functions of the Judicial Council should in no way be limited to the endorsement or disapproval of bills which may be submitted to it. This would make the Judicial Council more of an obstacle than an aid in the path of judicial reform. 61

61. A heartening sign of renewed activity on the part of the Judicial Council is its current study — almost completed — of a new set of rules of criminal procedure for the insular courts, which follow closely the federal rules.
SUGGESTIONS FOR REFORM

The history of the judicial system of Puerto Rico reveals that it has reached a more advanced stage than the typical American system. A long list of good features of the insular judicial system may be made, although there is great room for improvement in almost every instance. In the selection of personnel, for example, it has been seen how, with brief interruptions, the method of selection by appointment has prevailed, as against the highly unsuccessful method of selection by election. "Inadaptation of the system of popular election of judges to the conditions in which judges are to be chosen in the urban, industrial society of today," Pound has written, "has been thoroughly demonstrated by experience. In the rural, agricultural society of one hundred years ago, lawyers were chiefly busied in the courts; the voters had their turn as grand
jurors or petit jurors and the farmers generally attended the short terms of the local court of general jurisdiction of first instance as spectators. The leaders of the bar went circuit and were well known to the voters from having seen and heard them and from the repute of the circuit or even of the state in which they practiced. It was then possible for the voters to make a wise choice from among the relatively small number of conspicuously qualified lawyers. Today choice has to be made largely if not chiefly on newspaper repute or on the speeches or broadcasts of candidates and their supporters.\(^2\) The long insular tradition of appointive judges should be carefully safeguarded. The unfortunate practice of having the minor judiciary support itself by fees also failed in Puerto Rico. Salaries of judges below the rank of district court judge are still inadequate, however; and tenure is still far from secure for all but supreme court justices. Municipal Court

\(^2\) Introduction to Haynes' The selection and tenure of judges. The National Conference of Judicial Councils, 1947, p. XVII. See pp. 238-258 of this book for a bibliography on the subject. As to the Missouri plan for the selection of judges, it is this writer's view that its value lies as an ingenious compromise between the poorer method of selection by election and the better method of selection by appointment.
judges hold office for too short a term and the district court judges, although apparently enjoying long terms, actually are removable almost at will. The colonial system was in this respect far superior to the present one, it having achieved absolute irremovability of judges. For the retirement laws - another advanced feature of the insular system - to take any meaning at all they must be coupled with full security of tenure.

Another highly advanced characteristic of the system under study is the existence of an administrative office of the courts, to handle the business aspect of court organization. As has also been seen, responsibility for the administration of justice in the Island has been centralized on one person: the Attorney General.

Still other commendable features, discussed in earlier chapters, are the institution of a judicial council, a unified bar, with compulsory membership and a stamp duty to provide it ample revenues, and the possession of rule-making powers by the Supreme Court, which has led to a

3. See p. 274, supra.
4. By Act No. 212, approved March 26, 1946, for example, the District Court of San Juan was reorganized under another name to get rid of two judges.
great simplification of civil procedure.

Few American states enjoy all of the above benefits. Simply having machinery that may theoretically make for a more efficient administration of justice does not ensure, however, the attainment of that end. We have seen how lack of full consciousness in Puerto Rico of the functions and possibilities of such institutions as the legislative council, the administrative office of the courts, and the judicial council, has lessened their utility, often leading to the disappearance of the institution, as in the case of the Permanent Legislative Commission, and as has almost been the case with the Judicial Council. Some shortcomings of these institutions, as they have been known to Puerto Rico, have already been pointed out. Let us now add to the case, then to consider the possibilities of reorganization.

Court organization in Puerto Rico, although not so complex as that of many states, is still far from simple. It fits well with the description that Dean Pound has made of the organization of the typical American judicial system. Puerto Rico still finds it necessary to divide the business of administering justice to such a very small community.

5. See Chapter VII of Organization of Courts, 1940.
among the traditional four sets of courts, with the attendant waste of judicial power, the hard-and-fast jurisdictional lines, the poor handling of small causes, the inadequate distribution of work, the lack of cooperation among courts, and the added expense to both the litigants and the public. When a breakdown in the system occurs and the courts get too far behind in their work, the traditional remedy of creating still more courts and more judges is also reached for. The result has already been seen. While a highly industrialized community of forty million people like England can effectively manage, through better court organization techniques, with only eighty-eight judges above the rank of justice of the peace, an agricultural community of two million inhabitants like Puerto Rico must have sixty-eight judges above such rank and still fight for more. The great waste in judicial power and public funds may easily be realized if we consider that in 1917, for example, the approximate cost per case in the Municipal Court of Barros was $7.42, while the cost per case in a Municipal court of

6. See Chapter III of supra, and footnote 8 in Chapter VIII. The number of judges above such rank will certainly climb to almost a hundred within a year or two, in view of the earnest efforts of the Department of Justice and the Bar Association, as exemplified by Senate Bill 302, filed March 21, 1947, which adds about thirty more judges.
the same rank, that of Juana Díaz, the judge of which handled 1603 cases to the other's 404, was $1.87. The amount of judicial business in many small communities did not justify the establishment there of municipal and district courts. As far back as 1913, the then Attorney General pointed out the defects of such ways of organizing the municipal courts. "It would seem," he wrote, "that we have gone too far in the haphazard creation of these courts. Perhaps part of the trouble resulted from the name. They are called 'municipal courts' and this has made every municipality feel that it ought to have a court of its own. They are not municipal, however, in anything but in name. Their collections in the way of fines and fees go to the insular, not the municipal, treasury, and their expenses form part of the insular, not the municipal budget. The maintenance of municipal courts in small places, sitting seldom, is wasteful." 7 The Attorney General further pointed out a number of municipal courts which, although handling close to one thousand cases in the year, had work for only

one or two days a week.

These remarks also applied to the district courts. In 1917, the District Court of Aguadilla disposed by trying 186 civil cases, leaving 67 pending, while the District Court of Ponce, with the same number of judges (one), disposed of 580 civil cases, leaving pending 1,122. While in places having much judicial business the dockets got years behind, in other places the judge could easily dispose of all business by holding court only a few days a month.

The situation has not at all improved since 1917.

Statistics for 1945-46 show that the District Court of

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8. ibid. After commenting on the cost per case in the Municipal Court of Coamo ($11.45), as compared to that of the Municipal Court of San Juan ($1.93), the Attorney General remarks that Puerto Rico, with only a million and a quarter inhabitants (in 1913) need not have thirty-four municipal courts, when a city like New York, with a population of five million then accomplished the equivalent work of municipal courts with only nine civil and two criminal courts (op. cit., pp. 403-404).

9. These are the most recent available, although not in published form as yet. The statistics only show in this respect the number of cases decided by each court. Reference may then be made to the general appropriation bill to arrive at cost per case figures, a revealing item which should always be included in the statistics published by the office of the Attorney General.
Guayama, for example, disposed, whether by trial, dismissal
without trial, or transfer, of 890 civil and criminal cases,
while the District Court of Bayamón, identically equipped,
handled almost twice as many cases, 1,697 in all. The cost
per case in the Bayamón court was accordingly $34, while
each case handled by the Guayama court cost the people of
Puerto Rico $67.50.

An analogous situation prevails in the municipal courts.
While the Municipal Court of Orocovis, for example, handled
only 1044 cases (cost per case: $4.70), the Municipal Court
of Bayamón, with exactly the same personnel, decided 4,089
cases (cost per case: $2.40). The same enormous waste is
evident as respects the justice of the peace courts. While
the justice of the peace of Caguas decided 2,289 cases, the
justice of the peace of Lajas had only 83 cases to handle,
one left pending, and the justice of the peace of Barcelona
had only 92. Defective court organization is, undoubtedly,
the primary cause of this situation.

Theoretically, the needed flexibility and unification
could have been obtained by able use of the great powers
conferred upon the Attorney General by section fourteen of
the Organic Act, which made him in effect a Minister of
Justice. As remarked before, no Attorney General has fully
availled himself of such powers, however, section fourteen of the Organic Act being simply used as a constitutional sanction for the activities of the Administrative Office. The activities of such office, moreover, have not been fruitful enough. Its statistics service must be expanded, to supply fuller data on the work of each court. The office of the Attorney General could have used, since the beginning of the century, even the meager data available to recommend legislation which should provide for a more flexible court organization or, since 1917, use its clear power to reassign judges and cases to avoid the glaring waste of judicial power. Nothing more imaginative was done in the last thirty years, however, than to appoint, through legislation, judges at-large to relieve the crowded dockets of courts which got too far behind. Nothing was done about courts with too little business to justify their existence, such as providing, for example, that judges of one court may sit in other courts. Although the machinery thus existed for the creation of a unified, more flexible system, with centralized responsibility for efficient judicial and business management, it was never put properly to use.

There would have been danger, perhaps, in making the
Attorney General so effectively the head of the insular judicial system. It has been remarked, as respects the administrative power which the United States Attorney General obtained over the federal courts that "it is out of accord with the genius of our institutions that one who practices in the courts, especially one who represents so powerful an adversary in practicing in them in cases against private litigants, should in any way be the head, in theory or in practice, of a department comprising the courts and charged with superintendence or supervision of them."10 It may readily be granted that it is far preferable, of course, to place full responsibility for the administration of justice in a Ministry of Justice, headed perhaps by the Chief Justice of the Supreme Court, rather than in the Office of the Attorney General, but as between no management at all and management through the Office of the Attorney General, the latter alternative must certainly be chosen.

for judicial reorganization must necessarily be executed through the Office of the Attorney General.

Another defect of the Puerto Rican judicial system, which it shares with most of the American judicial systems, is the low brand of justice it dispenses in small causes. The defects of the justice of the peace system have been long pointed out by leading writers in the field. Chief Justice Winslow has written:

"The justice of the peace should disappear along with the multitude of inferior courts. Perhaps he was necessary in a frontier community when travel was difficult, but he is not necessary now for he is an anomaly. The idea that an ignorant court is good enough for the small litigant is an affront to the reason. The issues in a small case may be as important to the parties as the issues in a great case, indeed they may be more vital. They should be tried only by an able court and stop there.

The unlimited right of appeal which now exists makes the litigation of small claims a farce in which neither party wins and both parties come out poorer than when they began. The appeal is a mistaken kindness. It should not exist, and for that reason, if for no other, the trial should be before an able court."

The same views have been held since early in the century by the pioneer in the field, Dean Pound:

"No doubt opinions will differ as to the proposal to include the tribunals for the disposition of causes of lesser magnitude in a plan for unification of the judicial system. But no tribunals are more in need of precisely this treatment... Even small causes call for a high type of judge if they are to be determined justly as well as expeditiously... The judges who are assigned to small causes should be of such caliber that they could be trusted and would command the respect and confidence of the public, so that there would be no need of retrial on appeal but review could be confined to ascertaining that the law was properly found and interpreted and applied. The further we can get away from the old justice of the peace idea for small causes, the better." 12

The great attention given in this century to the problem of dispensing a better brand of justice in small causes is indeed one of the most significant recent trends in judicial administration.

One further defect that greatly contributes to crowded dockets and the high cost of justice is the inadequacy of some aspects of appellate procedure, particularly as regards double appeals. It is sheer waste to allow cases decided by the justice of the peace and the municipal courts to be tried *de novo* in another court and then further appealed. One appeal should be more than enough; even making all appellate jurisdiction discretionary may well serve the ends

12. Organization of courts, p. 279. S. E. 932, filed March 21, 1947, proposed to abolish the justice of the peace courts in Puerto Rico.
of justice. Great steps have been taken in Puerto Rico towards the simplification of procedure by the granting of full rule-making powers to the Supreme Court and the adoption of the Federal Rules of Civil Procedure. Further steps must, however, be taken to get away from such things as trial of the record, rather than of the case, the complicated and wasteful ritual of transferring cases from one court to another, the expensive ceremony of copying the record for the use of the upper court, futile appeals, the tendency to regard appeals as new proceedings, the inability of the appellate tribunal to take new evidence, and the lack of power of the present Supreme Court, as opposed to the old territorial audiencia, to bring cases unto itself.

How may we tackle the deficiencies of the insular system in such vital aspects as organization of the courts, business management, personnel, and procedure? It is submitted that the way to a less wasteful, simpler, more efficient system of administering justice on our island lies in the idea of court unification. Unification of courts was the ideal toward which Puerto Rico's own judicial system

13. See in this respect, Pound: Appellate procedure in civil cases, 1941, Chapters V and VI, where all these points are elaborated in great detail.
grasped during the last years of the later colonial period. It has been the ideal so successfully achieved by the English Supreme Court of Judicature and by such single courts as the Chicago Municipal Court, the Recorder's Court of Detroit, the Detroit Circuit Court and the Common Pleas Court of Cuyahoga County (Cleveland); it is the ideal to which a distinguished organization of scholars, the American Judicature Society, which has made so many vital contributions to the improvement of judicial administration in the United States, has dedicated since 1913 its most earnest efforts.

Unification of the insular courts would mean that there would be but one court for the entire island of Puerto Rico, which may be called the General Court, the Court of Justice or, simply, the Court of Puerto Rico. All judges would be judges of the same court. The Court would have two

15.- For a history of these courts, consult: Willoughby, W. R.: Principles of Judicial Administration, 1929.
16.- For the important part played by the American Judicature Society in recent trends on court organization, see 30 Jr. Am. Jud. Soc. 31 (1946).
branches: the Supreme Court and the Court of First Instance, which may itself have two divisions, corresponding to the present municipal and district courts. The Judges of one branch may be assigned to try cases in the other branch. All jurisdiction vested in the Court shall belong to all the Divisions alike.

The system should have an administrative head, who may be called the Chief Justice or the Minister of Justice. As indicated by Pound, it is advisable that the Chief Justice, although formally a member of the Supreme Court, should not be burdened with the task of presiding it. Both the Supreme Court and the Court of First Instance should have a separate presiding judge. Each presiding judge would report to the Chief Justice on the needs of his division; the Chief Justice, under rules of courts

17. A Supreme Court thus continuing to exist, although as a branch of the Insular Court, little difficulty could be anticipated as regards section 49 of the Organic Act, quoted at pages 269-270, supra.

18. See the similar suggestions in this respect by Dean McCormick in his articles: "A proposed reorganization of the Illinois judiciary," 23 Ill. L. Rev. 31 (1934) and "Modernizing the Texas Judicial System," 21 Texas L. Rev. 675 (1943). Pound is inclined to recommend three separate branches. Organization of the Courts, p. 277.
would have full powers to assign cases and transfer judges as the necessities of the system require. As pointed out before, until an amendment of section fourteen of the Organic Act may be secured, the head of the unified judicial system may be, as he is now, the Attorney General of Puerto Rico.

To attend to the business aspect of court organization, the present Administrative Office of the Courts would, of course, be continued and expanded. It would be headed by an Administrative Director appointed, as at present, by the Attorney General, or the Chief Justice, as the case might be. The Administrative Office would continue to gather statistics on the work of the courts, which would be supplied quarterly, instead of annually, and with the Office's recommendations for administrative improvements, to the Chief Justice, the presiding judges of divisions, and the Judicial Council. The Administrative Office would continue to have complete supervisory powers over the clerical force, which would be appointed by the Administrative Director. The disbursement of moneys and the keeping of accounts would, of course, continue to be the concern of the Administrative Office. The Administrative Office would also under the unified system be in charge of receiving and filing all papers connected with litigation, as well as of establishing
calendars and dockets and issuing court process.

All judges of the Court of Puerto Rico should be appointed for life or for terms not shorter than ten
years by the head of the system, who would himself be
appointed, under a modified Organic Act, by the Gover­
nor for a term co-terminous with his own. 19 The head
of the system should, preferably, be selected from the
justices of the Supreme Court and, once his term as
Chief Justice expires, he should resume his former du­
ties. There would be little danger, under a system of
life tenure or of long terms, that the Chief Justice
would acquire too great a power of patronage, as the
appointments for him to make would necessarily be few.
This system has worked well in England, where the Lord
Chancellor, head of the unified Court, appoints for
life all royal judges except the Master of the Rolls
and the Lord Chief Justice, who are appointed by the
Prime Minister. The Lord Chancellor is also appointed
by the Prime Minister and holds office only during the
life of the government. This has been a tried system
too in Puerto Rico during the later colonial period,
where we saw that all municipal judges were appointed
by the president of the audiencia. 20

19. This is substantially, the McCormick plan. See
footnote 18.
20. See page 235, supra.
As a check on the Chief Justice, appointments may be required to be made from a list of three candidates submitted by the Judicial Council. Until a Chief Justice, rather than an Attorney General, becomes the head of the judicial system, all judicial appointments may continue to be made by the Governor of Puerto Rico, by and with the consent of the Senate. Removal proceedings may be started by resolution of the Judicial Council, and tried before the Supreme Court.

Upon determination by the Judicial Council, or without such determination, as budgetary control may be sufficient in this respect, of the need for deputy judges, masters, or commissioners, these may also be appointed by the Chief Justice.

Appellate procedure would be simpler. The Court of First Instance, or each of its divisions, if it be so subdivided, would hold appellate terms, where a bench of three judges would sit. The appellate jurisdiction of the Supreme Court would thereupon be wholly discretionary. The Supreme Court, like the old territorial audiencia, would have power to bring cases unto itself. Both the Court of First

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21. Compare with section 64 of Senate Bill 932, filed March 21, 1947.

21A. The plan is further elaborated in Pound's Appellate Procedure in Civil Cases, 1941, pp. 389-392.
Instance, in its appellate terms, and the Supreme Court would have power, as far as may be constitutionally feasible, to take and receive new evidence.

Besides the institution of the Judicial Council, to provide valuable criticism, promote cooperation among the judges, and allow for self-improvement, the institution of a Judicial Conference should also be established in Puerto Rico. Frequent meetings of divisional judges, under the chairmanship of the presiding judge of the division, should also be encouraged.

What would be the advantages of thus unifying the judicial system of Puerto Rico? Would it check the evident waste of judicial power at present? Would it promote a truly efficient administration of justice? It is submitted that it would.

Unification of the insular courts would do away with the present multiplication of courts and judges. Judges would be used where they are most needed. The spectacle of a court months, and even years, behind in its work, while other courts easily dispose of their business by sitting a few days a

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month, would disappear. The utter flexibility of the system would not only facilitate, as it has in England, the even distribution of work, thus doing away with crowded dockets and making possible a speedier, while higher brand of justice, but would also insure that the best judges would be available for the toughest cases. This would also allow, as Dean Pound has remarked, for a truer type of specialization: specialization of judges, rather than specialization of courts.

With an even distribution of work, which should ensue in a lesser number of judges, as it has in all jurisdictions where unification plans have been carried out, the payment of very substantial salaries to the judges may be possible at no added expense. English county judges, for example, are paid about $7,500 a year ($1,500), puisne judges of the High Court (equivalent to our district court judges), earn close to $25,000 ($5,000), and the Lord Chancellor is paid nearly $50,000 a year ($10,000). Puerto Rico could not, of course, afford to pay such salaries, but very substantial increases to present salary levels may be made. This, together with the greater security of tenure that it might bring about,
should attract to the bench a higher type of lawyer. The veritable stigma attached in Puerto Rico to any judicial office below the rank of district court judge - and even in this there is not much prestige - should be made to disappear.

A judicial system thus unified would have no place for the idea that a type of justice good enough for small litigants is that dispensed by lay magistrates at a top salary of $100 a month, or by often unscrupulous, politics - ridden, municipal courts. Especially in communities where the theory of judicial supremacy obtains, the judiciary should be able to attract and have some of the very best legal talent available; and it is the very best talent available that should serve the common man.

Unification of the courts would also do away with jurisdictional squabbles and conflicts between different courts, as there would only be one court, the whole jurisdiction of which would be vested in all its divisions alike. Which judge or which division is the competent one to sit in a given case would be a purely administrative matter. It would no longer be a matter of grave concern to litigants.

24. The fact that there are notable exceptions does not alter the case.
and their attorneys to decide which court is the competent one to hear their case. Complaints would simply be filed at any office of the Court and would be then administratively referred to the appropriate branch. There would no longer be any reason for the great expense and the great delay involved in copying the record of a case heard by an inferior court, and which is being appealed. All records would be the records of the same court; there need be nothing more, as Pound has pointed out, than the signing of a receipt by the upper branch.

The unification of courts also means unified responsibility. One of the most serious defects of American judicial systems is the absolute lack of responsibility of a given individual or group for the efficient administration of justice. Centralized responsibility is a well-recognized need of an efficient judicial system. As we have seen, constitutional provisions for centralized responsibility already exist in Puerto Rico, which puts the insular system much nearer the goal of unification than most American communities.

Self-government of the judiciary, another end to be achieved through court integration, would also be the way to greater independence of the judiciary. It would greatly diminish the danger of administrative management of judicial affairs from the outside.

Unification of the courts is an indispensable step for activities like those of an Administrative Office of the Courts to take any meaning at all. The gathering of statistics about the work of the courts may be a worthy enterprise in itself, but hardly useful if there is no way to cure the defects that the statistics reveal. A Statistics Office for the courts presumes a head of the judicial system, and institutions like the Judicial Council, which may do something about establishing the improvements that the gathered data show to be necessary.

It should be clearly realized in Puerto Rico how very close the insular judicial system is to the ideal of court unification, how unification is indeed required by salient features of this system—features such as its business and judicial manager, its Administrative Office, its Judicial Council, the rule-making powers of its Supreme Court, and its unified Bar—in order that those very features may acquire true relevance and make possible a better brand of justice.
Fuller use of present institutional resources, together with an effort to abolish causes leading to the present waste of judicial power, should help to provide Puerto Rico with a better judicial system.
APPENDIX I

A BILL

To Create a Legislative Council.

Be it enacted by the Legislature of Puerto Rico:

Section 1.- There is hereby created a Legislative Council, which shall consist, in addition to the presiding officers of each House, of seven senators appointed by the President of the Senate, who shall be chairman, and seven representatives, appointed by the Speaker of the House of Representatives, who shall be vice-chairman. The Governor of Puerto Rico shall be ex-officio a member of the council. The appointments are to be approved by a majority vote of the respective houses. The Secretary of the Senate shall serve as Secretary of the council. The more important standing committees of both houses shall be adequately represented. The minorities shall also be accorded due representation.

Section 2.- Members of the Legislative Council shall hold office from the date of their appointment until the adjourning of the next succeeding regular session of the Legislature following their appointment, and until the appointment of their successors. Any vacancy arising in
the membership of the representation from the Senate shall be filled by the President of the Senate, and any vacancy arising in the membership of the representation from the House shall be filled by the Speaker of the House.

Section 3.- The members of the Legislative Council shall draw per diems of seven (7) dollars for each day of session that they attend, and upon request of the Secretary of the Council, countersigned by the Chairman thereof, they may use, for the trips that it may be necessary to make in the fulfillment of their official duties, vehicles owned by the People of Puerto Rico, subject to the administrative provisions in force on this matter.

Section 4.- The Legislative Council shall meet at least once every two months. Nine members shall constitute a quorum. The council shall keep complete minutes of its meetings, a copy of which shall be filed at the Office of the Legislative Counsel. Any member of the legislature shall have the right to attend any of the sessions of the Council, and may present his views on any subject which the Council may at any particular time be considering, but he shall not have the right to participate in any decision which the council may make.

Section 5.- The Legislative Council shall have the power, and it shall be its duty:
a) to collect information concerning the government and general welfare of the Island;

b) to prepare a legislative program in the form of bills, or otherwise, as in its opinion the welfare of the Island may require. The recommendations of the Council shall be completed and made public at least thirty days prior to any regular session of the legislature at which such recommendations are to be submitted; and a copy of said recommendations shall be mailed to the address of each member of the Legislature, to the Office of the Legislative Counsel, and to the Library of the University of Puerto Rico. In its final report, the Council shall not simply recommend specified solutions, but also state and explain the major alternatives, the conflicts of policy, if any, and its findings of fact. When bills are submitted by the Council together with a report, factual material should be accompanied to enable other members of the Legislature to make a comprehensive analysis of each situation;

c) to publish during the year in addition to the final report mentioned in (b) of this section, periodic reports on subjects under consideration. In gathering data, drafting bills, and other research activities, the Legislative Council may avail itself of the facilities offered by the Office of the Legislative Counsel;
d) to hold public hearings whenever it deems advisable, in order to give interested citizens an opportunity to express their views;

e) in the discharge of any of its duties, to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents and testimony, and to cause the deposition of witnesses, either residing within or without the territory, to be taken in the manner prescribed by law for taking depositions in civil actions in the district courts. In case of disobedience on the part of any person to comply with any subpoena issued in behalf of the Council, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, it shall be the duty of the District Court of the district in which the defendant resides to compel obedience by proceedings for contempt. Each witness who appears before the Legislative Council by its order, other than a government officer or employee, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid upon the presentation of proper vouchers sworn to by such witnesses and approved by the secretary and chairman of the Council;}
f) to investigate and study the possibilities of reforming the system of local government, the government of the municipalities included, with a view to simplifying the organization of government;

g) to investigate and study the possibilities for consolidation of agencies of the Insular Government, and for elimination of all unnecessary activities and of all duplication in office personnel and equipment;

h) to study methods of coordinating the activities of the various departments, bureaus, commissions, corporations, and other agencies of the Insular Government, and of increasing their efficiency;

i) to study and inquire into the financial administration of the municipal governments;

j) to cooperate with the administration in devising means of enforcing the law and improving the effectiveness of administrative methods;

k) to appoint legislative or lay committees to study specific phases of problems;

l) to appoint other members of the legislature as additional members of the Council for a limited period of time. Said additional members shall not receive per diems for their services;

m) whenever the Council may so decide, to send some of its members, to be appointed by the Chair-
man, to make surveys of legislation in force abroad;

n) to require officials of the Senate and
of the House of Representatives to render such services as
may be needed by the Council without receiving any addi-
tional compensation therefor;

o) to employ for its own technical advising,
the services of experts and employees of the Insular
Government, in agreement with the head of the agency which
may employ them, which experts and employees shall not
receive any additional compensation for their services.
The Council may also contract for the services of other
experts to be paid from the funds which are appropriated
by this Act for the use of the Council;

p) to supervise the functioning of, or work
in close cooperation with, as the Legislature may direct,
all legislative special commissions, commissions of in-
quiry or interim committees which may be appointed by the
Legislature;

q) to request the head of any government
agency to furnish the Council such data as the Council may
need for the fulfillment of its functions. It shall be the
duty of government agencies to comply with these requests.

Section 6. - For the disbursements necessary for the carry-
ing out of this act, the sum of fifteen (15) thousand dol-

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lars is hereby appropriated annually, which sum shall
be entered in the books of the Auditor of Puerto Rico
and shall be disbursed by the Treasurer of Puerto Rico
as needed, in the judgment of the Council, in accordance
with the legal provisions in force on the matter.
In Puerto Rico there is today no independent agency exclusively engaged in legislative reference work. Some work in legislative drafting and statutory revision is carried on in the Office of the Attorney General, through desultory consultation by the Legislature. There is no separate division of the Department of Justice entirely engaged in this work. No library and research services are anywhere provided. It is submitted that a Legislative Reference Office should be created by the Legislature of Puerto Rico, to render services in research and reference work, bill drafting and statutory revision. It is true that these functions can be divided between the Department of Justice and the University of Puerto Rico; the questionable saving in expenses that perhaps could be made, however, can hardly outweigh the convenience of concentrating all legislative reference activities in a single agency.

The first section of the proposed bill (1) specifies

1. The proposed bill, with some modifications, became Act 397, approved May 13, 1947. See Appendix III.
that the Legislative Reference Office is created, not only for the use of the members of the Legislature, but also for the use of the Governor and the various Insular government agencies. A limited service is also provided for private citizens.

The Office shall be in charge of a director appointed by a committee of five, consisting of the Governor, the President of the Senate, the Speaker of the House, the Attorney General, and the Chief Justice of the Supreme Court. This follows the New Mexico procedure, with some differences as to the membership of the appointing committee. The American Legislators' Association, in its model act of 1933, suggested this procedure as an alternative to appointment by the Legislative Council. The former alternative is preferred as a better safeguard against political appointments. Some states confer the power of appointing the director on the Governor (Virginia, Ohio and Indiana, among others). In no case where an agency performs all three legislative services has the legislature been given the power to appoint the director.

The qualification that the director be a lawyer is generally included. Some acts add that he should be well versed in political science. The term of office ranges from two to ten years. The proposed bill chooses
six years as the term of office. The power on immediate removal is granted to the Legislature, upon vote of a majority of the members.

The director shall have the power to appoint the technical and clerical assistants needed to perform the functions of the office, a common provision to most acts creating legislative reference services. He is to establish a system of exchange of official publications with the states and territories, and the federal government, as well as with lay research agencies (sections 2, (A) (8), and 4 (a). This is greatly needed in Puerto Rico, in which the library facilities in law and the other social sciences are so meager. The director shall make an annual report to the legislature, due the first day of each annual session, on the activities of the office (section 4, d).

Section two of the bill sets forth the functions of the Legislative Reference Office. The reference services are to consist of: 1) comprehensive research on legislative problems; 2) the making of digests showing the practices of other legislatures in dealing with similar problems; 3) the preparation of reports on the social and economic effects of laws enacted by the Legislature of Puerto Rico. No planned and comprehensive effort to organize these
research activities has so far been made in Puerto Rico. In fact, there is hardly any native literature worth the name on the subject. Still, there are a number of promising young economists, political scientists, and sociologists sworn to irrelevant work in a number of unwieldy and confused bureaus. Some can be put to work in a well-directed effort to learn more about our problems; 4) the making of such investigations into legislative and governmental institutions as will aid the legislature; 5) the maintenance of a reference room and a small working library; 6) the filing, digesting, and indexing of all bills, resolutions, memorials, reports and other documents printed by order of the Legislature. Research into current legislative problems is made a very difficult task by the lack of complete and well-indexed files of these documents; 7) cooperation with the Permanent Legislative Commission, created by Act No. 313 of May 15, 1945, and bodies which may succeed it, such as the council proposed in Chapter III, as well as with interim committees that may be appointed by the Legislature or the Governor; 8) cooperation with the legislative reference offices of other states and with lay research agencies. Many of these agencies publish frequent and highly valuable reports on vital legislative subjects. A useful collection of these published papers
will greatly aid competent research.

The Legislative Reference Office shall also publish a legislative manual, as the Legislature may direct and shall also serve as parliamentary adviser to the houses.

The bill drafting service will be, perhaps, of even greater service at the start. Any member of the Legislature, the Governor, and the head of any government agency may request the Legislative Reference Office to draft, or aid in drafting, a bill or other legislative document. Such requests must be in writing and signed. Even in the absence of requests, a thorough revision of all bills submitted to the legislature shall be undertaken by the Office for the purpose of detecting defects in form and substance. Weekly reports on its findings shall be submitted by the Office to the standing committees that may be in charge of the bills. The Office shall also prepare and issue styles and forms for drafting bills and other legislative measures, to be distributed to members of the Legislature, key government officers, and to all private citizens who may request a copy.

The third main group of functions are the statutory revision services. Not only the laws passed by the Legislature in its last session are to be studied, but our whole set of laws. A systematic study of the statutes in
effect in Puerto Rico shall be undertaken to render them more simple and consistent. A new revised edition of our statutes is needed. The 1941 edition, a laudable effort in many ways, is still very far from adequate. The groundwork for annotated editions of our codes, so sorely needed, can also be laid, in cooperation with the Law School of the University of Puerto Rico, the Bar Association, and any commission that the Legislature may see fit to appoint.

The Legislative Reference Office should also be entrusted with the preparation for printing of the Session Laws. A general index of our laws should also be started.

So many are indeed the functions which the legislative reference office should perform—it can be entrusted with a few more, such as completion of the digest to the Puerto Rican Reports, stopped short at volume 37 of the reports, and preparation of a system of "Shepard's Citations" in respect to Puerto Rican decisions, but it should be first seen how the office performs under the already heavy burden proposed in this bill—that there is no question about there being work for the whole year for a number of permanent employees. Some temporary employees must also be employed probably from January to March to ease the extra strain brought about
by the legislative session.

Section six of the bill appropriates $25,000 annually for the total expenses of the Legislative Reference Office. It actually could be done with less, although the initial expenditures in books for a good working library and in office equipment must run high. An insufficient appropriation, however, may be responsible for inadequate services by, and even failure of, the Legislative Reference Office. Some states, like New York, appropriate as much as $85,000; others, like North Carolina, as little as $3,687. A middle course could be experimented with, even though our ambitions often do not fit our purse. This, however, is work of the utmost importance. A legislature engaged in such vast social planning must have good tools at its disposal; automobiles without wheels make silly machines.

APPENDIX III

ACT. NO. 297

To create the Office of Legislative Counsel.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- There is hereby created the Office of Legislative Counsel, annexed to the Legislature of Puerto Rico, and for the exclusive use of said Legislature.

FUNCTIONS

Section 2.- The Office of Legislative Counsel shall render the following services:

Drafting of Bills and Other Legislative Documents:

a) To draft, or assist in drafting, at the request of any member of the Legislature of Puerto Rico, bills, resolutions, memorandums, reports of committees, and amendments thereto.

b) To prepare and distribute to government agencies model forms for the drafting of bills and other legislative documents.

Legal Counsel and Research on Legislative Problems:

c) To provide a service for the investigation of
legislative problems, either at the request of the members of the Legislature, or on its own initiative.

d) To provide a service of legal counsel on legislative matters.

e) To provide digests indicating the procedure of other legislative bodies in connection with similar problems.

f) To carry out research on the social and economic results of laws passed by the Legislature.

g) To carry out such research on the operation of government institutions as the Legislature may request.

h) To answer consultations made by members of the Legislature on questions of parliamentary law and legislative procedure.

i) To compile and publish a legislative manual with information concerning the structure and functioning of this Legislature, as well as of the departments, public corporations, and other instrumentalities of The People of Puerto Rico.

j) To publish surveys of general interest on legislative problems, prepared by the Office of Legislative Counsel or other institutions or persons engaged in the investigation of legislative problems.

Statute Revision and Compilation Service:
k) To make a systematic survey of the laws of Puerto Rico in force, with the aim to revise and compile the same.

1) To cooperate with any committee appointed for the purpose of codifying or revising the laws of Puerto Rico, and, at the request of such committee, to draft such bills as may be necessary for the consolidation and revision of our laws.

m) To prepare a general index of the laws of Puerto Rico.

Library Service:

n) To maintain a library which shall be known as the Capitol Library, and which shall be a dependency of the Office of Legislative Counsel.

o) To purchase for the library, works and publications on various subjects, specially law books, books on government, economics, and public administration, as well as such books as may be useful to the legislators in their work.

p) To cooperate with the members of the Legislature in the search for such books and information as said members may request.

q) To keep a file with copies of all bills, resolutions, memorandums, journals, reports of legislative committees, and other documents printed by direction of
either house of this Legislature, as well as to
classify same and prepare indexes therefor.

r) To establish an exchange service with similar
offices of the federal government and of other states
and territories, as well as with private agencies engaged
in the investigation of governmental problems.

ADMINISTRATION

Section 3.- The Office of Legislative Counsel
shall be under a Legislative Counselor, who shall be
appointed for the term of one year, by the President
of the Senate. The Legislative Counselor shall receive
a salary of not more than six thousand (6,000) dollars
a year, and shall be reimbursed for necessary travelling
expenses. The Legislative Counselor may be removed from
office by the President of the Senate.

Section 4.- The Legislative Counselor shall have
the following powers, and it shall be his duty:

a) To direct all the activities of the Office of
Legislative Counsel.

b) To make rules for the use of books and supplies
of the Capitol Library.

c) To request of the heads of departments, com-
mittees, public corporations, and other insular govern-
ment agencies, the necessary number of copies of official
publications to furnish the exchange service provided for in Section 2 (r). It shall be the duty of the aforesaid officials to send the copies requested.

d) To submit to the Legislature and the Governor, on or before the first day of each regular session, an annual report summarizing the activities of the Office of Legislative Counsel.

e) To publish such surveys as the Legislature, or any of the Houses, may prescribe, as well as those that the said Office may deem desirable or necessary, with the approval of the President of the Senate or of the Speaker of the House of Representatives.

Section 5.- The President of the Senate shall appoint the personnel necessary for the Office of Legislative Counsel.

Section 6.- The Capitol Library, created by Act No. 39, approved April 22, 1946, shall, upon the effective date of this Act, deliver its property, including office supplies and files, to the Office of Legislative Counsel.

Section 7.- The Commissioner of the Interior shall prepare quarters in the Capitol Building for the Office of Legislative Counsel.

APPROPRIATION

Section 8.- For the payment of the salaries of the
employees of the Office of Legislative Counsel, as well as for the expenses necessary for the proper functioning of said Office the sum of twenty five thousand (25,000) dollars is hereby appropriated for the fiscal year 1947-48, from any funds in the Insular Treasury not otherwise appropriated, in addition to the sum that may be available on the effective date of this Act in the appropriation for the Capitol Library made by Act. 390, approved April 22, 1946, which sum available is hereby reappropriated and transferred to the Office of Legislative Counsel.

Section 9.- All laws or parts of laws in conflict herewith are hereby repealed; Act No. 390, approved April 22, 1946, is hereby expressly repealed.

Section 10.- This Act, being of an urgent and necessary character, shall take effect immediately.

Approved, May 13, 1947.
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