Federal District Court in Puerto Rico: A Brief Look at the Court and Federal Handling of Commonwealth Civil Law in Diversity Cases

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When the United States Constitution was ratified, authorizing the creation of a federal court system, neither Puerto Rico nor Louisiana, with their civil law traditions, were yet a part of the United States. Nevertheless, the common-law based U.S. federal court system can and does assume jurisdiction over cases applying the civil law of Puerto Rico and Louisiana. Given the common-law tradition this country inherited from England, it is unlikely that the framers anticipated the interpretation of civil law by these courts. Yet, since the Erie doctrine was first applied, the federal courts in both Puerto Rico and Louisiana have been forced to apply civil law.

The purpose of this inquiry is to explore how the federal district court in Puerto Rico has handled the situation. Unlike Louisiana, Puerto Rico varies drastically from the continental states in many ways beyond its civil law system. It is a Spanish speaking territory which is dominated by an hispanic culture. Allegiance to the United States is strained and the political status of the island is in question with every gubernatorial election. But these cultural and political factors only augment the diffi-
culties which face this particular District Court. The application of civil law in diversity suits raises a series of questions which this note will identify.

I. INTRODUCTION AND BACKGROUND TO THE FEDERAL DISTRICT COURT IN PUERTO RICO

On Dec. 10, 1898 Spain and the United States signed the Treaty of Paris ending the Spanish-American War. Under Article II of the Treaty, "Spain cedes to the United States the island of Porto Rico . . . ." The first American sponsored court in Puerto Rico was established two days before the signing of this treaty when General Henry ordered the creation of a new Military Commission while the American military was allegedly acting under a protocol entitled a "Basis for Establishment of Peace." The establishment of this court has been criticized both for its possible lack of authority and as "the worst example of despotic power." The military court was short-lived and General Davis (General Henry's successor) ordered the creation of the Provisional Court of the
United States for the Department of Puerto Rico.\(^\text{10}\) Upon inauguration of the Court, its chief architect declared that "[t]his installation of the High Federal Court is the greatest step taken thus far by the country on its road to Americanization."\(^\text{11}\) Again, the authority of this court has been questioned as well as the fundamental premise that Puerto Rico was in need of Americanization.\(^\text{12}\)

Like its predecessor, the life span of this Court was brief. It was superseded when Congress approved the Organic Act of April 12, 1900 (The Foraker Act)\(^\text{13}\) to "temporarily provide revenues and a civil government for Porto Rico [sic], and for other purposes."\(^\text{14}\) Section 34 of this act discontinued the Provisional Court and created the District Court of the United States for Puerto Rico which would have, "in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizant in the circuit courts of the United States."\(^\text{15}\) Moreover, this section required that "[a]ll pleadings and proceedings in said court shall be conducted in the English language."\(^\text{16}\) This latter requirement has remained throughout the history of this particular court despite the fact that the language of Puerto Rico is not English. Sixty-five years after the creation of the District Court (and in response to a request that the Supreme Court of Puerto Rico similarly conduct its proceedings in English) the Supreme Court of Puerto Rico stated:

> It is a fact not subject to historical rectification that the vehicle of expression, the language of the Puerto Rican people—integral part of our origin and of our Hispanic culture—has been and continues to be Spanish. . . . [T]he means of expression of our people is Spanish and that is a reality that cannot be changed by any law.\(^\text{17}\)

The Jones Act (Organic Act of 1917),\(^\text{18}\) significantly modified the jurisdiction of the federal court. Section five of the Act made Puerto Ricans U.S. citizens\(^\text{19}\) and section 41 of the Act granted the Court general jurisdiction as well as special jurisdiction when the matter in controversy

\(^{10}\) Delgado Cintrón, supra at 22; Tschudin, supra note 8, at 43.

\(^{11}\) Delgado Cintrón, supra at 22.


\(^{13}\) 31 Stat. 84 (1900); Puerto Rican Federal Relations Act, §9, 64 Stat. 319 (1950); P.R. LAWS ANN. Hist. Doc., at 26.

\(^{14}\) Id.

\(^{15}\) §34, 31 Stat. at 45-46.

\(^{16}\) Id.

\(^{17}\) People v. Superior Court, 92 P.R.R. 580, 588-89 (1965). For a more complete analysis of this dilemma, see Tschudin, supra note 8.

\(^{18}\) 39 Stat. 951 (1917).

\(^{19}\) §5, 39 Stat. at 953.
exceeded $3000 and the parties were not domiciled in Puerto Rico. This type of case could be brought regardless of whether there was diversity of citizenship, or whether the parties were aliens. Finally, section 42 reiterated the English language requirement and stated that this district court will be governed by the same rules as govern all other federal district courts.

The territory of Puerto Rico officially became the Commonwealth of Puerto Rico in 1952. Section 1332(b) of Title 28 of the United States Code had previously included Puerto Rico under the heading of "territory" and there was some confusion as to whether the island was still included within this definition of diversity jurisdiction. For this reason, the section was amended to provide that the Commonwealth of Puerto Rico be treated as a state for purposes of district court diversity jurisdiction.

II. MECHANICS OF THE COURT

Generally, the jurisdiction and procedure of the District Court for Puerto Rico are similar to other federal district courts. Final judgments are appealable. Review of such judgments of the District Court was initially assigned to the First Circuit Court of Appeals in 1915. An exclusive right of direct review to the United States Supreme Court from this Court and the Supreme Court of Puerto Rico was granted in 1961. In 1948, Congress included the District Court within the meaning of "district courts of the United States." Congress, in a report by the Judiciary Committee of the House of Representatives, addressed the issue of jurisdiction and stated that "Hawaii and Puerto Rico are included as judicial districts of the United States, since in matters of jurisdiction, powers, and

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20 §41, 39 Stat. at 965.
21 48 U.S.C. §863 (1964). See also Leibowitz, The Applicability of Federal Law to the Commonwealth of Puerto Rico, 37 Rev. Jur. U.P.R. 615, 647 (1968), which explains that this jurisdiction originated in order to permit mainland cases to be tried in courts familiar with the problems of the litigants and in a context with which the disputants are familiar. This jurisdiction was retained in the Puerto Rican Federal Relations Act, 72 Stat. 415 (1958).
22 §42, 39 Stat. at 966.
25 Id.
27 Id.
procedure, they are in all respects equal to other United States district courts." The First Circuit Court of Appeals has interpreted this to mean: "Congress was intent on raising [these courts] on a parity with the other federal district courts and deriving their authority from the same statutory source from which all district courts in the federal judicial system receive their powers."

Although the status of the civil law in Puerto Rico is the next topic of discussion, two points should be mentioned here which relate to the mechanics of the Court. First, since judges on this Court now tend to be Puerto Ricans schooled in the civilist tradition, their natural respect for the integrity of statutory law and its literal interpretation, cannot be ignored. This respect is an internal mechanism which regulates court action.

Second, when applying Puerto Rican law, the District Court has power under Article 7 of the Puerto Rican Civil Code of 1902 to explicitly resort to supplementary sources of law when it feels the need to "fill a gap (lacunae, non-existent provisions)." This is analogous to the law-equity merger in the federal courts. Specifically, the Code states "when there is no law applicable to the case, the court shall decide in accordance with equity, which means that natural reason, as embodied in the general principles of the Law, and established usages and customs, shall be taken into consideration." The next section will elaborate on how these mechanisms affect the law in a substantive manner.

III. STATUS OF CIVIL LAW IN PUERTO RICO AT THE TIME OF THE INCEPTION OF THE COMMONWEALTH (1952)

The Spanish Civil Code was extended to the islands of Puerto Rico, Cuba and the Phillipines by Royal Decree on July 31, 1889 and took effect in Puerto Rico on January 1, 1890. The Code was first incorporated by the American military when:

[I]n General Orders, No. 1, Oct. 18, 1898, the Military Governor provided that the provincial and municipal laws, in so far as they affected the settlement of the private rights of person and property and provided for the punishment of crime, would be enforced unless they were incompatible

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28 Quoted in Miranda v. U.S., 266 F.2d 9, 14 (1st Cir. 1958).
30 See Torres, supra note 12, at 41.
33 31 P.R. Laws Ann. §1, 364-65. See also Torres v. Rubianes, 20 P.R.R. 316 (1914).
with the changed conditions in Puerto Rico, in which event they might be suspended by the department commander and that they would be administered substantially as they were before the cession to the United States.\textsuperscript{44}

The first post Spanish-American War code was adopted in 1902. Between 1911 and 1941, there were various compilations, editions and supplements promulgated which provide the primary grounding for the present Puerto Rican Civil Code.\textsuperscript{45}

Decisions rendered by the Spanish courts can still affect the construction of the Code. Marchan v. Eguen\textsuperscript{46} held that when the Puerto Rican legislature adopted the Civil Code of Spain, it accepted the construction placed upon it by the Spanish courts. Judgments rendered by the Supreme Court of Spain prior to October 18, 1898, construing the Spanish Civil Code then in force in Puerto Rico are binding on the courts of Puerto Rico while those rendered after that date have no legal force except to the extent that they offer well-reasoned possible solutions to a particular problem.\textsuperscript{47} Additionally, it has been held that “in accordance with a well-established rule of legal interpretation, this [Puerto Rican] court may refer to eminent Spanish commentators for the proper interpretation of such parts of the Civil Code of Puerto Rico as have been copied literally from the Spanish Civil Code.”\textsuperscript{48}

But Spain is not the only jurisdiction whose jurisprudence is influential in Puerto Rico. The Preface to the 1930 edition of The Civil Code contains the following passage:

[J]udges and lawyers may . . . consider as it may be necessary, the jurisprudence of our Supreme Court applicable to each section, and in cases, for example, of provisions already existing in the Spanish Civil Code, or which were brought to our Civil Code from the Civil Code of Louisiana, the construction given to said provisions by the magistrates of the respective country.\textsuperscript{49}

Thus, when interpreting the Puerto Rican Code's language, the Louisiana Code will be similarly respected for its contributions to the Puerto Rican Code.

Underlying these code adaptations was a political struggle which must be mentioned. Puerto Rico was acquired during America's imperial period. The United States was “bursting into the twentieth century as a

\textsuperscript{44} 31 P.R. LAWS ANN. §1, 364-65.
\textsuperscript{45} Id. at 365-70. These revisions are dealt with in the section of the code entitled “History of the Civil Code.”
\textsuperscript{46} 44 P.R.R. 396 (1933).
\textsuperscript{47} See Olivieri v. Biaggi, 17 P.R.R. 676 (1911).
\textsuperscript{48} See Bonillerse v. González, 17 P.R.R. 1084 (1911).
\textsuperscript{49} 31 P.R. LAWS ANN. §1, 364 at 366.
modern industrialized nation with impressive technological leadership, searching for profitable markets for its products and surplus capital. With nationalism on the rise, a resurgence of manifest destiny, characterized by paternalism, was evident. Upon his landing in Puerto Rica, the American General Miles brought the following message to the Island:

In the prosecution of the war against the kingdom of Spain by the people of the United States in the cause of liberty, justice, and humanity, its military forces have come to occupy the island of Puerto Rico . . . They bring you the fostering arm of a nation of free people, whose greatest power is in its justice and humanity to all those living within its fold . . . We have not come to make war upon the people of a country that for centuries has been oppressed, but, on the contrary, to bring you protection, not only to yourselves but to your property, to promote your prosperity, and bestow upon you the immunities and blessings of the liberal institutions of our government. It is not our purpose to interfere with any existing laws and customs that are wholesome and beneficial to your people so long as they conform to the rules of military administration of order and justice. This is not a war of devastation, but one to give to all within the control of its military and naval forces the advantages and blessings of enlightened civilization.41

Although the Civil Code eventually emerged in substantially the same form as when it was extended to Puerto Rico under the Spanish regime,42 this U.S. paternalism did exert certain pressure during the ensuing legal reconstruction which followed the war.

In 1898, five basic laws were present in Puerto Rico: (1) The Spanish Civil Code of 1898; (2) The Spanish Code of Commerce of 1885; (3) The Spanish Penal Code of 1870; (4) The Spanish Law of Civil Procedure of 1855; and (5) The Spanish Law of Criminal Procedure of 1872.43 The Foraker Act sought to harmonize these Spanish Codes with Anglo-American Law. Section 40 of this Act requires that:

[A] commission, to consist of three members, at least one of whom shall be a native citizen of Puerto Rico, shall be appointed by the President, by and with the advice and consent of the Senate to compile and revise the laws of Puerto Rico also the various codes of procedure and systems of municipal government now in force, and to frame and report such legislation as may be necessary to make a simple, harmonious and economical government, establish justice and secure its prompt and efficient administration . . . And said commission shall make full and final report, in both the English and Spanish languages, of all its revisions, compila-

40 See Torres, supra note 12, at 49.
42 Id. at 20.
43 Id. at 5.
tions, and recommendations, with explanatory notes as to the changes and the reasons therefor, to the Congress on or before one year after the passage of this act. 44

The goals of the commission established under this act were patently unrealistic. Within a period of seven months, two Americans and one Puerto Rican were expected to lay the foundations for harmonizing the differences between the Civil Law and the Anglo-American law in Puerto Rico. 46 Even under ideal conditions, such a harmonization within these time constraints would have been nearly impossible.

Furthermore, there were other serious problems. First, many drastic and sudden changes in the structure of the law would jeopardize popular respect for the law. Second, there was deep resentment of the idea that the Puerto Ricans were not themselves competent to revise and adapt their codes if the new conditions so required. 46

Fortunately, the report issued by the commission urged a policy of gradual harmonization to be worked out by the Legislative Assembly of Puerto Rico. 47 Subsequently, this did become the goal of the Legislature. 48 It is for this reason that the Civil Code emerged largely intact. 49

When examining the status of codes in civil and common law systems, important distinctions as to sources of law must be made. As Dean Rodriguez Ramos has succinctly stated:

> For the civilian, written texts are the primary source of positive law. On the other hand, as stated by Paton, "in England statutes are a gloss written around the common law," and as Pound has put it:
> According to the orthodox view of our law a statute is something exceptional, something introduced into the general body of the common law without any necessary or systematic relation thereto, in order to meet some special situation, and hence governing that situation only.

> The continental codes state the law comprehensively in general principles. Civil law codes and statutes are the same in form and enactment. On the other hand, in the common law world a statute, "unless declaratory of the common law, gives only a rule," so that "statutes in derogation of the common law are to be construed strictly." 50

In contrast, the general rule in the civil law system is that judicial deci-
sions do not constitute a primary source of law, but only a gloss on the law.\textsuperscript{51}

Although a more elaborate discussion of the fundamental differences between the two systems is not within the scope of this note,\textsuperscript{52} Puerto Rico's particular approach to this contradiction is relevant. The legislature of Puerto Rico has made it clear that its will is not to be ignored.\textsuperscript{53} Although Legislation is the primary source of law, Puerto Rico has not totally embraced the civil law tradition. On the contrary, it must be remembered that only two of the five codes enforced in the Island are true continental codes, the other three are Anglo-American.\textsuperscript{54}

Looking again to Dean Rodríguez Ramos' evaluation of the pre-1949 situation, a few points should be reiterated. At almost every opportunity, the Supreme Court of Puerto Rico emphatically states its adherence to the written law contained in the codes or statutes and asserts that it is not in the business of judicial legislation.\textsuperscript{55} Yet this is not universally applied. The Court has made policy decisions.\textsuperscript{56} Also, there are a number of exceptional cases which ignore the written law without expressly proclaiming judicial power to disregard statutory law.\textsuperscript{57} There are also instances in which the court cites codes and statutes, but gives the impression of not being certain whether the written law alone constitutes a sufficiently reliable authority upon which to base a decision. Here, it is not unusual for the Supreme Court of Puerto Rico to support the quoted provisions of a statute with judicial decisions, either local or from states where similar statutes exist.\textsuperscript{58} Nor is it unusual to see the court utilize

\textsuperscript{51} See Rodríguez Ramos, supra note 41, at 346.

\textsuperscript{52} For an overview of the differences between the two systems, see See Rodríguez Ramos, supra note 41, at 346 and 351.

\textsuperscript{53} See Rodriguez Ramos, supra note 41, at 351. The following pertinent provisions of the Civil Code of Puerto Rico, quoted in Rodriguez Ramos, supra note 41, leave no doubt that the legislature intended for its will to prevail:

\begin{itemize}
  \item Article 5. — Laws are repealed only by means of subsequent laws; and disuse, custom or practice to the contrary shall not prevail against the observance thereof.
  \item Article 7. — When no law exists applicable to the case at issue, the court shall decide in accordance with equity, which means that natural reason according to the general principles of law, and accepted and established usages and customs, shall be taken into consideration.
  \item Article 12. — In matters which are the subject of special laws, deficiencies in such laws shall be supplied by the provisions of this Code.
  \item Article 21. — The distinction of laws into odious or favorable with a view of limiting or extending their provisions, shall not be made by those whose duty it is to interpret them.
\end{itemize}

\textsuperscript{54} See Rodríguez Ramos, supra note 41, at 352.

\textsuperscript{55} See Rodríguez Ramos, supra note 41, at 352.

\textsuperscript{56} See Rodríguez Ramos, supra note 41, at 352.

\textsuperscript{57} See Rodriguez Ramos, supra note 41, at 353.

\textsuperscript{58} See Rodríguez Ramos, supra note 41, at 354-55.
Latin maxims borrowed from the Anglo-American system.\(^{59}\)

*Stare decisis*, a clearly rejected doctrine in most civil law countries, has some place in Puerto Rico. Almost since its creation, the Supreme Court of Puerto Rico has held itself bound by its own decision, although not absolutely so.\(^{60}\) Moreover, the decisions of the Supreme Court of the United States are ultimately binding on the insular courts.\(^{61}\)

At the pre-Commonwealth juncture in which Dean Ramos was writing, legal method was in a state of indecision. His suggestion was that, although there was a need for reformulation of Puerto Rico's written law and revision of their methods of interpretation, there was no need for "slavish loyalty to any one legal system."\(^{62}\)

One way that Puerto Rico has dealt with the intermingling of these two legal systems is through its "equity" jurisdiction. It should be noted that "equity" is a development of the common law, not meant for inclusion in a civilian system; but the concept of equity is a necessary aspect of any legal system, be it common law or civil law.\(^{63}\) Although a civil law judge must generally decide according to written law, where true "gaps" exist, equity may be called upon to fill the vacuum.

Article 7 of the Puerto Rican Civil Code\(^{64}\) dealing with supplementary sources of law was derived from the codes of Spain and Louisiana. Article 21 of the Louisiana Civil Code states:

> [1]n all civil matters, where there is no express law, the judge is bound to proceed and decide according to equity. To decide equitably, an appeal is to be made to natural law and reason, or received usages, where positive law is silent.\(^{65}\)

**Article 6 of the Civil Code of Spain states:**

Any court which refuses to render judgment on the pretext of silence, obscurity or insufficiency of the law, shall incur liability therefor. When there is no law exactly applicable to the point in controversy, the customs of the place shall be observed, and in the absence thereof, the general principles of the Law.\(^{66}\)

The Supreme Court of Puerto Rico has held that Article 7 applies to both

\(^{59}\) See Rodriguez Ramos, *supra* note 41, at 356.

\(^{60}\) See Rodriguez Ramos, *supra* note 41, at 361.


\(^{62}\) See Rodriguez Ramos, *supra* note 41, at 367.


\(^{64}\) P. R. CIV. CODE art. 7. See also Nickles, *supra* note 31, at 25-26.

\(^{65}\) LA. CIV. CODE ANN. art. 21 (West). For elaboration, see Rodriguez Ramos, *supra* note 63, at 722-23.

\(^{66}\) SPAIN CIV. CODE art. 6 (1870). See also Rodriguez Ramos, *supra* note 63, at 722-23.
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procedural and substantive issues.  

The blending of the Spanish and Louisiana codes was pursuant to a recommendation of the Revision Commission which had been established by the Foraker Act. The blending has resulted in considerable confusion. Dean Rodriguez Ramos has suggested that it is but another example of the Commission's hasty evaluation of the legal needs in Puerto Rico at the turn of the century. For example, when referring to the "law applicable," the Puerto Rican Code does not use either the term "exactly," as in the Spanish Code, or "express," as in the Louisiana Code, to modify the phrase. Writers have queried whether this omission is significant to Puerto Rican jurisprudence but no clear cut answer exists.  

Another problem is the use of the term "equity" within the provision. Equity is not a concept whose use can only be made "when there is no law applicable to the case," as prescribed in Article 7 but rather:

[E]quity is an element of interpretation which serves the purpose of preventing a rigid application of a general norm in a singular case, when such an application of the norm might give rise to an injustice. The concept of equity may be used even in the construction of what may seem to be a clear statute. Its use cannot be limited to the cases in which "general principles of the law," or "usages and customs," are to be "taken into consideration," for it can also be used when there is a law applicable to the case.

Although Article 14 of this same Code provides that "[w]hen a law is clear and free from all ambiguity, the letter of it is not to be disregarded, under the pretext of pursuing its spirit," the converse is also true. Thus, this provision has a potential for rigidity which could undermine the effectiveness of equity jurisdiction in Puerto Rico.

Before concluding this discussion of the status of the civil law in Puerto Rico at the inception of the Commonwealth, a few comments should be made regarding available sources of law. As in Spain, the universal sources of law are, in order, statutes, customs and general principles of law. This order has been accepted by the Puerto Rico Supreme Court despite the juxtaposition of the last two concepts within Article 7 of the Puerto Rican Code. In addition, stare decisis, as accepted by the Island's Supreme Court, provides a fourth source. Finally, the writings of

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68 Rodriguez Ramos, supra note 63, at 731.
69 Rodriguez Ramos, supra note 63, at 734-35.
70 P.R. Civ. Cons. art. 7. See also Rodriguez Ramos, supra 63, at 734-35.
71 Rodriguez Ramos, supra note 63, at 735.
72 Rodriguez Ramos, supra note 63, at 735. See also Nickles, supra note 31 and related text.
Spain’s most outstanding commentators provide a fifth source.\textsuperscript{73}

This overview of the civil law’s evolution in Puerto Rico has been largely from the perspective of the insular courts. But a federal district court necessarily has other loyalties within the American legal system. The crucial inquiry is whether, in light of the legal sources and traditions it must follow, the federal district court will ignore the common law as a potential source for substantive law? Without purporting to suggest a conclusive answer, a look at some of the court’s decisions during the past two decades might prove helpful.

IV. THE FEDERAL DISTRICT COURT’S DEALING WITH THE COMMON LAW

When the court faces a diversity suit, it has a range of options extending from outright rejection to complete acceptance of common law doctrine.

A. Rejection of the Common Law

\textit{Matter of Daben Corp.}\textsuperscript{74} was a bankruptcy proceeding involving a merchandiser of children’s wear (debtor) and a department store operator (creditor). In deciding an alternate holding for the case, the Court confronted the issue of whether a license agreement constituted a lease under the Civil Code of Puerto Rico and was thus entitled to priority in bankruptcy proceedings. The old Federal Bankruptcy Act\textsuperscript{76} acknowledged priority status to creditors only where the landlord-creditor was entitled to priority under state law (here, Puerto Rico).\textsuperscript{78} It is important to understand that these “lease” arrangements in department stores are quite common and readily accepted in the United States.\textsuperscript{77} The court held that such an arrangement was not subject to priority status under Puerto Rican law and cited the relevant statutes.

With regard to specified personal property of the debtor, the following are preferred:

\begin{itemize}
\item (7) Credits for rents and leases for one year with regard to the personal property of the lessee existing on the estate leased and on the fruits thereof.\textsuperscript{78}
\end{itemize}

Immediately thereafter, the Court noted that this statute, by its own

\begin{itemize}
\item \textsuperscript{73} See Rodríguez Ramos, \textit{supra} note 63, at 735.
\item \textsuperscript{74} 469 F. Supp. 135 (D.P.R. 1979).
\item \textsuperscript{76} Id. See 31 P. R. LAWS ANN. §5192; P. R. CIV. CODE art. 1822.
\item \textsuperscript{77} See 469 F. Supp. at 140-41.
\item \textsuperscript{78} See P. R. CIV. CODE art. 1822.
\end{itemize}
terms, applied not only to common law leases but also to leases under Puerto Rican civil law.79

The district court turned to the Supreme Court of Puerto Rico for guidance and quoted a case dealing with credit cards80 which recognized the difficulties of resisting the temptation to adopt American common law developments in the fact of the civil law:

Forcing new institutions or even merely new usages of familiar institutions into ancient frameworks is a task, nevertheless, that is never free of dangers. Not everything is found nor should be found in the desired degree of detail in the Code, which sometimes derives its vitality and capacity to adapt to changing realities more by reason of its great silences and general formulations than by its detailed principles.81

Furthermore, the lease-license distinction so useful in discussing the lease agreement in the common law is entirely inapplicable in the civil law.82 The entire concept of license in Puerto Rico, as derived from the Spanish licencia bears little resemblance to that of the common law.83

Despite the possible analogy to typical American department store leases the court chose to carefully and deferentially analyze the civil law’s position. Before driving the proverbial nail in the creditor’s coffin by finding there was no fixed price necessary for a lease under Puerto Rican law, the Court noted yet another difference with the common law. Unlike the common law, the civil law allows that a leased item not be entirely defined. 84 Here the creditor had not leased a piece of real property, but rather had contracted for the use of certain departments within the store.

Fernandez-Cerra v. Commercial Insurance Co. of Newark85 provides an example of deference to the civil law in a family-property law context. This tort case was dismissed for lack of complete diversity necessary for jurisdiction.86 The central issue was whether the defendant’s wife should be considered for purposes of diversity. Her addition to the suit would destroy diversity.

The Court, typically, first looked to the positive law as embodied in the Code. It found that, under Puerto Rican law, a new entity is created upon marriage.87 Also, except in rare cases, the husband is the adminis-
trator of the conjugal relationship and is also its legal representative. Since it is the citizenship of the "real party in interest" which is scrutinized for diversity jurisdiction, the Court inquired into the nature of the husband-wife relationship under the Civil Code. It found that:

[T]he character of his administration and representation could be described as being similar to that of a managing partner in a commercial partnership, in which case there is little doubt that the real party in interest is the partnership and not the partner.

This being the case, the citizenship of the partnership would be considered as an unincorporated association which would have the citizenship of its members.

The Court, however, did not stop here. It considered the possibility of using an analogy from Texas law because there appeared to be no Puerto Rican cases precisely on point. But the concepts of community property in Texas and conjugal partnership proved incompatible. Texas law gives to the husband the interest for diversity purposes. In rejecting this possible analogy, the Court quoted from another case critical of a decision which had engaged in such an analogy.

Keeping in mind the historical and juridical origin of the concept of property in the Anglo-American law of feudal origin and of the concept of property in the civil law of Roman origin, one realizes that that was not the way to solve a problem of interpretation and application of the Civil Code. It would have been more proper, since an institution of civil law is involved, to seek enlightenment in the continental European civil doctrine and case law.

Thus, the Court’s unsympathetic attitude towards common law analogy is again reflected when these analogies contradict accepted civil law doctrine. Here the doctrine being threatened was the accepted interpretation of the conjugal relationship.

B. Use of Decisions in Another Civil Law Jurisdiction: Louisiana

As noted in Part III, the civil law system in Louisiana has been influ-
ential in Puerto Rico since the Foraker Act. Torres v. Interstate Fire and Casualty Company was a tort case which illustrates how judicial decision making in Louisiana holds precedential value for Puerto Rican courts.

The issue in Torres was whether the defense of limitation of liability was a defense personal to the shipowner, or a non-personal defense also available to a shipowner's insurer. After noting the paucity of decisions in this area of law, the court looked at cases from the United States District Court for the Eastern District of Louisiana. The Louisiana court had concluded that the defense was personal. The Puerto Rican District Court noted the general tendency of the Supreme Court of Puerto Rico to hold these defenses personal. Finally, the Court found case law interpreting the legislative history of the Puerto Rican direct action statute (the basis for the cause of action in the instant case) as intending to bring it completely in line with the Louisiana statutory counterpart. These three findings convinced the court that the two civil law systems were in agreement, and the Torres court held that the defense was personal to the shipowner. The methodology employed in this case is not unlike that which a strict common law court would employ.

C. Reconciliation: Some Use of the Common Law and Like Results

Carrillo v. Samaeit Westbulk illustrates how an underlying policy can reconcile two seemingly distinct laws. Here, the Court held against a defendant's claim that the jury awards for a wrongful death action were excessive because they included damages for loss of consortium and society, grief and anguish. The federal maritime rights involved stemmed from the Puerto Rico's Workmen's Accident Compensation Act. This act incorporated the rights and remedies provided by the Civil Code of Puerto Rico with regard to third party actions, which has no counterpart in common law. This Act is:

[A]n all-encompassing tort statute that serves as the basis for recovery for all damage caused by negligence, intentional acts or violations of im-

where the Court examined similar articles in the Louisiana court to help arrive at a decision; and Esquilon v. Waterman Steamship Corp., 196 F. Supp. 600 (D.P.R. 1961), where the Court relied upon a federal appellate court's decision which was an appeal from a Louisiana court in Louisiana.

97 Id. at 788.
96 Id. at 788, citing Trigo v. Travelers Ins. Co. (P.R.S. Ct., March 11, 1965).
95 275 F. Supp. at 788.
101 Id. at 127, (construing 11 P. R. LAWS ANN., §1 et seq.).
102 See 385 F. Supp. at 127.
posed obligations and which has been interpreted to include a wrongful death remedy and survival type actions.\footnote{132}

Nevertheless, after finding extensive case law support for the broad fault concept embodied in this section, the Court noted that the admiralty law and its humanitarian policy were compatible and coextensive with the policy of the civil code.\footnote{104} For this and other precedential reasons, the Court held that there was no problem of uniformity between the two and that therefore it was not improper to award these damages.\footnote{106}

_Cooperation de Seguros Multiples de Puerto Rico v. San Juan_\footnote{105} is an example in agency law of the court showing considerable deference to common law principles. The issue presented was whether lack of knowledge or consent by a principal of the tortious acts of his agent, constituted, as a matter of law, a defense to the relief claimed.\footnote{107} Although the court notes the broader liability of the defendant under Puerto Rican law as derived from civil law doctrine,\footnote{108} it did not stop there in its analysis of the law. Instead it chose to lay out the rule under the common law approach and to show how the defendant would be liable under either system. In fact, the test for liability as stated by the Supreme Court of Puerto Rico was derived primarily from the Restatement of the Law of Agency §230.\footnote{109}

Insight into the relative position of contract law in common law, and obligations in civil law may be found in _Felix A. Rodriguez, v. Bristol-Myers Co._\footnote{110} Essentially, the issue involved the possible imposition of specific performance. But specific performance must meet different standards under the two systems. At civil law, the fact that a plaintiff alleges a breach of contract for which there is an adequate remedy at law does not preclude him from seeking specific performance.\footnote{111} Thus the only limits under this system are whether the imposition is possible and conscionable.\footnote{112}

The mechanics of the civil law, however, are such that in the instant case, specific performance was denied as it would have been under common law. Obligation, in the civil law, can be broken down into two catego-
ries: (1) to give and (2) to do or abstain, with the latter subject to an exception. That exception relates to the personal nature of the "doing." Because this was such a case where the doing was of a personal nature, specific performance was denied. The Court's decision immediately pointed out that a similar result could be reached under the common law because of the difficulty of performance arising out of the personal nature of the contractual obligations. Thus, although structurally different, the two systems would yield similar results.

D. Adoption and Harmonization

Civil and common law concepts were harmonized in González v. Fireman's Ins. Co. The case dealt with the extent of recovery by a wife for injuries to her husband. The defendant contended that since a husband has a legal duty to support his wife, the wife should not be entitled to damages for loss of consortium, companionship and affection once there has been a recovery for his injuries. The Court accepted the plaintiff's proposition that the issue was one of harmonization of the two systems when it noted that loss of consortium was clearly recognized in common law:

[T]he civil law, when it talks of the anxiety and distress of a wife witnessing her husband's sufferings, it means what the common law means when it speaks of loss of consortium. Accordingly, under such a caption, the wife would be getting compensation for her anxiety and distress caused by witnessing her husband's suffering; item of damages clearly recognized under the law of the Commonwealth of Puerto Rico.

Thus, when it is merely the captions or labels which are disparate in the two systems, the court will look to the true nature of the claim to harmonize them.

Pierluisis v. E.R. Squibb & Sons, Inc. offers an example of where the common law completely fills a gap in the civil law. In this case, the codefendant drug company was sued for negligence for failing to meet the standard of care with respect to a duty to warn. The plaintiff argued that the alleged duty included a written warning in Spanish on the drug label itself when marketed in Puerto Rico. The defendant insisted that this alleged duty was overly expensive and that the duty was discharged since the drug company had made it clear to the medical profession what the

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118 Id.
114 Id. at 647.
118 Id. at 144.
potential risks of using the drug were.

This was a case of first impression, and the Court began by stating that:

[even though common law precedents are not obligatory on Puerto Rico courts the Supreme Court of Puerto Rico has repeatedly held that such common law can be utilized by Commonwealth courts when it is found to be useful and persuasive.]

Thus free to examine common law precedents, the Court found the general rule to be that "the duty of adequate warning by the manufacturer of an ethical drug is discharged by its warning of hazards to doctors."

Applying this rule to the facts of the instant case, the Court held that this warning had been brought home to the doctor by the actions of the drug company and that the "fact that they were in the English language was a non-contributory irrelevant circumstance within the setting of the undisputed facts of this case." Therefore, without the existence of any duty to warn the general public, the drug company had adequately met its duty of care. But again, this is a strictly common law result imposed by the Court.

V. PROSPECTS FOR CIVIL LAW AND THE FEDERAL DISTRICT COURT IN PUERTO RICO

The unique Commonwealth status of Puerto Rico has made the District Court, perhaps the most controversial of the federal district courts. The scope of its jurisdiction is inextricably tied to fundamental political questions on the Island. The demand for increased autonomy cannot help but put increased pressures on the District Court and on the Congress to become more responsive to the needs of the Island.

The Solicitor General of the Commonwealth of Puerto Rico, speaking before the States Commission of the House of Representatives, made three specific recommendations in the interest of modifying the scope of the federal judiciary so as to guarantee true internal self government:

A. The United States District Court for Puerto Rico, unless it finds that the interest of justice otherwise requires, should abstain from exercising jurisdiction in civil actions based upon alleged acts or failures to act by officials of Puerto Rico pending final decisions by the Courts of Puerto Rico.

B. All statutes and provisions which limit the jurisdiction of the federal district courts in the United States should specifically be made applicable to the Federal District Court in Puerto Rico.

119 Id. at 694.
120 Id.
121 Id.
C. All decrees or final judgments of federal courts of appeals holding Puerto Rican statutes unconstitutional should be appealable right to the Supreme Court of the United States.123

One can sense in each of these recommendations a suspicion that there is a need for more deference to local laws. The latter reflects a clear presumption that the U.S. Supreme Court is more deferential to the Puerto Rican legislature than is the Court of Appeals.128

The relations of the federal courts to Puerto Rico have often raised delicate problems. It is a Spanish-speaking Commonwealth with a set of laws still impregnated with Spanish tradition. Federal courts, reversing Puerto Rican courts, were inclined to construe Puerto Rican laws in the Anglo-Saxon tradition which often left little room for the overtones of Spanish culture. Out of that experience grew a pronouncement by this court that a Puerto Rican court should not be overruled on its construction unless it could be said to be "inescapably wrong." 124

For a historical look at the proposals and a critical evaluation of their similarities and differences as well as the author's own proposed model, see Tschudin, supra note 8, at 63-86.

124 In Fornaris v. Ridge Tool Co., 400 U.S. 41 at 42-43 (1970), the Court stated:

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128 See Tschudin, supra note 8 at 45. The District Court has also taken a more expa-
VI. Conclusion

Several points should be made in turning to the future outlook for the civil law system in Puerto Rico, especially as it relates to the District Court. As a backdrop, the economic and political presence of the United States cannot be ignored as forces exerting pressure towards “Americanization” in general, and the use of common law specifically. Statistically, however, references to the common law in diversity suits in the District Court are relatively rare. The depth of the Spanish culture in Puerto Rico will not allow the base of the civil law to weaken appreciably. Although the political status of Puerto Rico will always be crucial in determining the extent of American influence, it will not be decisive. The case of Louisiana is *prima facie* evidence of this. Therefore, there is no reason to believe that the civil law will soon cease to be the dominant legal force on the Island.

The real question seems to be which system will provide more flexibility. The apparent choices are (a) the present system with “equity” gap-filling in the civil sense or (b) growing reliance on common law analogies and authority. The most likely trend is a hybrid of these two with primary reliance on the former. In any event, with other pressures being exerted on the Federal District Court, it seems that any move away from this model toward option (b) would have to be made by the insular court system. The growing deference towards Island institutions inevitably includes the preservation of the integrity of civil law in this forum.