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The Past, Present and Future of the Puerto Rico-U.S. Colonial Relationship:  
Vieques, Transculturation, and Reparations

**\*441** THE USES AND ABUSES OF THE NOTION OF LEGAL TRANSCULTURATION: THE  
PUERTO  
RICAN EXAMPLE?

Charles R. Venator Santiago [\[FNd1\]](#)

Fernando Ortiz first coined the term transculturation during the 1940s as a substitute for the then prevailing concept of acculturation. [\[FN1\]](#) According to Ortiz, this neologism provided a more accurate depiction of the process of national formation. To be sure, he argued that the word transculturation expressed

the highly varied phenomena that have come about in Cuba as a result of the extremely complex transmutations of culture that have taken place here, and without a knowledge of which it is impossible to understand the evolution of the Cuban folk, either in the economic or in the institutional, legal, ethical, religious, artistic, linguistic, psychological, sexual, or other aspects of life. [\[FN2\]](#)

It followed that the notion of transculturation was more flexible than the concept of acculturation, and more able to accommodate the nuances, ambiguities, and fluidity of national formation processes while acknowledging the multiple contributions of its members. In Mary Louise Pratt's terms the nation of Cuba became a "contact zone" where multiple traditions clashed and mutually constituted one another. [\[FN3\]](#) These interactions in turn resulted in the creation of a new national culture that drew on multiple cultural traditions. Ortiz' notion of transculturation, however, was premised on a conception of the nation that resulted from an internal process of national formation. Moreover this notion of transculturation did not account for the continuous influence of external interventions such as United States imperialism.

Puerto Rican legal scholars such as Carmelo Delgado Cintrón, [\[FN4\]](#) José Trías Monge, [\[FN5\]](#) Liana Fiol Matta, [\[FN6\]](#) and Rubén Nazario Velasco, [\[FN7\]](#) have used the notion of **\*442** transculturation to describe the historical development of different aspects of the Puerto Rican legal system since 1898 when the United States (U.S.) formally occupied the island. They have generally used this term to analyze the socio-legal relationship between Anglo-American common law institutions and the Spanish civil law tradition in Puerto Rico. More specifically, Puerto Rican legal scholars have sought to describe the formation of a Puerto Rican legal system that draws from both traditions. Ironically, all of these scholars have not only used an incorrect translation of the term transculturation, but have also used this neologism in an incorrect context.

This paper will attempt to clarify the meaning of the notion of transculturation and assess the implications of its use for the understanding of the Puerto Rican legal system. I am especially interested in identifying the theoretical implications of the use of this term to describe the case of Puerto Rico understood as a "contact zone" for multiple legal traditions. The paper begins with a brief discussion of the notions of

transculturation and acculturation. This section is intended to situate these concepts within some of the current debates in the area of comparative law. The second part of this paper will focus on a brief discussion of the arguments of the latter four legal scholars. I will argue that while their reflections on the relationship between multiple legal traditions and the formation of a Puerto Rican legal culture and system provide us with important insights, their arguments can also be misleading.

## I. From Acculturation to Transculturation

In the introduction to *Cuban Counterpoint*, Bronislaw Malinowski argued that the concept of acculturation contained a number of undesirable etymological implications, and was itself an ethnocentric word with negative moral implications. [\[FN8\]](#) Malinowski noted that acculturation was generally used to describe the experience of an immigrant in a foreign Western country, as well as those of subordinated populations conquered by the Western culture. He wrote:

The immigrant has to acculturate himself; so do the natives, pagan or heathen, barbarian or savage, who enjoy the benefits of being under the sway of our great Western culture. The "uncultured" is to receive the benefits of "our culture"; it is he who must change and become converted into "one of us." . . . It requires no effort to understand that by the use of the term acculturation we implicitly introduce a series of moral, normative, and evaluative concepts which radically vitiate the real understanding of the phenomenon. [\[FN9\]](#)

The exceptionalism of this concept was premised on the superiority of the Western culture over all other "less civilized cultures." Of course it is not clear whether individual immigrants could resist this process, or to what extent the Western culture was imposed and forced upon the "native." More importantly, his argument obscured the violence of acculturation. In other words, Malinowski's *\*443* argument treated acculturation as a non-violent process while simultaneously ignoring the institutional policies and practices of Western imperialism. This is especially important given that Malinowski blurred the distinctions between the acculturation of an immigrant and the acculturation of a conquered "native," as well as a nation.

Legal acculturation can be understood as a process of transformation whereby a nation that utilizes a non-Western legal system adopts a more civilized Western legal system. In the context of Puerto Rico, this meant that the Spanish civil law institutions would ultimately be transformed by the influence of the ostensibly superior and more civilized Anglo-American common law institutions. This acculturation could further be understood on two levels, namely at a structural level and on a social dimension. From a structural perspective, a local legal system could be transformed by simply replacing the civil law institutions with others governed by a common law tradition. In other words, the civil code could be replaced by a judge-centered system that was premised on *stare decisis*. Precedents or case law could take primacy as a source of law over statutory interpretation. At a social level, this could mean that the legal actors would have to adopt the dominant method of legal interpretation. It could also mean that legal actors would have to learn new strategies for adjudication.

Contemporary comparative legal scholars generally use the concepts of constitutional borrowing [\[FN10\]](#) and legal transplantation [\[FN11\]](#) to describe the ways in which legal actors of one nation can borrow and/or adopt foreign laws. In the case of constitutional or general legal borrowing, a judge or a legal actor can borrow rationales, some principles, an interpretation, or simply an argument to solve a legal question. This can happen when a particular national legal system is silent on a matter of law, or simply when a judge wants to justify a legal position or interpretation that is more consistent

with his personal or political ideology. Transplantation occurs when a national legislature chooses to adopt a wholesale foreign legal system, say for example a penal code, to replace or substitute its existing codes. Depending on the impact of these new laws, it is possible to argue that legal actors and society in general will experience a process of legal acculturation to the foreign law to the extent that the foreign legal system exerts a hegemonic force over the existing national legal system. In some ways it is possible to argue that the efforts by the U.S. to democratize countries by forcing them to adopt a bill of rights or a legal system modeled after its constitution can be understood as a form of legal acculturation. In other words, it is possible to argue that in order to participate in the global economy some nations are forced to adopt Western legal systems, making legal transplantation a necessary evil. Legal transplantation has in fact been a characteristic of national formation.

As I noted before, Ortiz proposed the notion of transculturation to replace the concept of acculturation, which he defined as a concept "used to describe the process of transition from one culture to another, and its manifold repercussions." [\[FN12\]](#) Ortiz, however, was describing the internal formation of a national culture composed of multiple existing traditions and cultures clashing with one another. This is *\*444* especially important because transculturation sought to describe an organic process that gave birth to a new national culture. Transculturation was a "reproductive process" that gave birth to an "offspring" culture that had "something of both parents" but was always "different from each of them." [\[FN13\]](#) Thus, this neologism not only explained the "problem of disadjustment and readjustment, of deculturation and acculturation," but also the new culture resulting from the mutually constitutive relationship between its component cultures. In the case of Cuba, these included the contributions of slaves and other black Cubans, "Jews, French, Anglo-Saxons, Chinese, and peoples of the four quarters of the globe." [\[FN14\]](#) Yet, it is not clear whether this culture would continue to change when it came into contact with new immigrants and their cultures. Nor is it clear that this process accounted for the distinct social, economic and political hierarchies present among these "micro" cultures.

It follows that legal transculturation can be understood as a process of developing a hybrid or mixed national legal system composed of the legal traditions already present in the contact zone that would become the new nation. Presumably, when legal actors would be forming a new national legal system, they would draw from the existing legal traditions and cultures and create a new legal system that had something of its "parents," but was also distinct from its progenitors. More importantly the process of legal transculturation presupposes the new national legal culture would acculturate all foreign legal cultures. In other words, to the extent that a foreign legal culture becomes a part of the new national legal system, it ceases to be foreign and strange and becomes a part of the organic whole. Unlike the process of transplantation, which presumably retains the foreign elements of an external legal culture, the process of transculturation creates a new legal system that naturalizes its foreign components.

## II. Legal Transculturation in Puerto Rico

As noted above, Puerto Rican legal commentators have incorrectly used the notion of transculturation to describe the island's legal system in light of its relationship with the U.S. More specifically, this neologism has been used to explain the ways in which the Puerto Rican legal system has been formed out of the interactions between a "native" or local Spanish civil law tradition and a "foreign" or external common law culture. In a sense, the Puerto Rican legal system can be understood as a "contact zone" where these two legal cultures have historically clashed. These clashes, in turn, have generated a new legal culture that draws from both the civil and common law traditions. Moreover, while the Puerto Rican legal system has been constituted by these two traditions of

Romano-Germanic heritage, it can also be described as an amalgamation or fusion of traditions. This fusion is an example of transculturation.

The literature on legal transculturation in Puerto Rico has been informed by two interpretive approaches. The traditional approach, as articulated by Delgado Cintrón and Trías Monge, has focused on procedural issues in the local courts. In particular, these legal commentators have addressed questions concerning the use of <sup>\*445</sup> the common law method in local courts that should otherwise be governed by civil law procedures. Their work has generally centered on the ways in which legal actors have used case law to interpret the civil code. In contrast, legal scholars like Fiol Matta and Nazario Velasco have used a post-structural method and a post-colonial approach, respectively, to understand the question of transculturation from a socio-legal vantage point. They have placed more emphasis on the relationship between society and the legal actor as a way to understand the relationship between the common and civil law traditions in the Puerto Rican legal culture. Notwithstanding their interesting and important scholarship, this literature has relied on an incorrect translation and use of the notion of transculturation. This conceptual confusion can be traced to their reliance on the work of German de Granda, a Colombian moralist and critic of linguistic imperialism in Puerto Rico. [\[FN15\]](#)

De Granda published his mistranslation of the notion of transculturation in 1972 in a book titled *Transculturación e Interferencia Linguística en el Puerto Rico Contemporáneo*. [\[FN16\]](#) To be sure, de Granda used Malinowski's work on acculturation to define the notion of transculturation. He neglected to cite the work of Ortiz, which was written in Spanish and sought to address the conceptual limits of Malinowski's method. Ironically, de Granda's project sought to clarify the imperialist role and interference of the English language over the Spanish vernacular in Puerto Rico. According to de Granda, the English language threatened the Puerto Rican national identity and in particular the Spanish heritage by infusing its vocabulary into the Spanish language spoken on the island. Presumably, this process of transculturation, or rather acculturation, would slowly result in the "blending in" of the Puerto Rican who would eventually be assimilated into the "American way of life." [\[FN17\]](#) Accordingly, the reliance on English words to describe the Puerto Rican reality would eventually result in the penetration, and eventual substitution, of Anglo-American values, morals, and cultural traditions over the Puerto Rican culture.

De Granda's argument suggests that legal "transculturation" in Puerto Rico can be understood as a process of institutional imperialism whereby the U.S. government sought to replace the island's national legal system, namely the Spanish civil law institutions, with common law institutions. It follows that this form of cultural imperialism manifested itself in institutional policies, procedures and practices as well as in the socio-legal culture. Thus, at a structural level, legal actors would rely on the *stare decisis* to interpret the civil code, as opposed to other methods of interpretation. At a cultural level, legal actors would adopt strategies of litigation that were more typical of the common law tradition. Of course, this argument is ultimately premised on the idea that the Puerto Rican legal system was a national, autonomous, and sovereign system. The reality, however, was much more complicated. The Puerto Rican legal system was a colonial legal system that was ultimately subordinate to the Spanish legal empire. The case of Puerto Rico is interesting because there is a structural and cultural shift from one empire to another. In other words the legal system operating in Puerto Rico prior to the U.S. occupation was also a colonial legal system and not a national legal system. Notwithstanding <sup>\*446</sup> this conceptual problem the literature on legal transculturation in Puerto Rico raises some interesting questions about the relationship between multiple legal traditions in a geopolitical contact zone, which are discussed below.

In the introduction to his book *Derecho y Colonialismo*, Delgado Cintrón uses the term transculturation to describe U.S. imperialism and its cultural interference in Puerto Rican legal institutions. Transculturation, he suggests, is a "sociological phenomena where one culture displaces or substitutes another. [FN18] This argument is further premised on two ideological conceptions of the Puerto Rican legal system. According to Delgado Cintrón, Puerto Rico is a Latin American nation that was civilized by Spain and therefore adopted European civil law institutions, culture, and language. [FN19] He further suggests that the Spanish "mother land" (*Madre patria*) had created the Puerto Rican nation. His second contention is that the United States, as an imperial power, has been colonizing the island and threatens to replace the island's culture with an alien language and culture. It follows that Puerto Rico has been surviving in a state of siege, and its national culture has been threatened by the Anglo-American culture.

For Delgado Cintrón legal transculturation is a negative process of colonialism. This is important because Delgado Cintrón's argument not only depicts U.S. common law as a "foreign," "alien" and threatening force, but it also obscures the more egalitarian aspects of this legal tradition and its more progressive influences in the Puerto Rican legal system. For example, the Spanish civil law tradition in Puerto Rico was silent on the matter of racism and racial discrimination. In contrast, the U.S. common law tradition provided for a conception of civil rights that addressed questions of racial discrimination in Puerto Rico. This is not to say that the legal actors addressed questions of discrimination in effective ways in Puerto Rico. My point, however, is to suggest that Delgado Cintrón's wholesale dismissal of the common law tradition on account of its relationship to U.S. imperialism does not recognize the progressive possibilities of the U.S. common law tradition, and by extension of legal transculturation in general. Moreover, this argument suggests a sort of glorification of the Spanish legal tradition and the lack of a critical perspective on this imperialist legal tradition.

Delgado Cintrón's argument is more consistent with Malinowski's conception of acculturation to the extent that his argument is premised on the notion that the occupying Anglo-American empire has attempted to assimilate and absorb the existing legal institution in the island by transplanting U.S. common law institutions. To this extent, legal transplantation and acculturation can be understood as external forms of imperialism that can be used to colonize and subordinate Puerto Rico. Whereas transculturation presupposes a more egalitarian and mutually constitutive relationship between competing legal cultures and traditions, Delgado Cintrón's argument suggests that the relationship between common and civil law legal traditions can only be understood as hierarchical and unequal. This argument further obscures the political aspects of this relationship and the relative autonomy of legal actors in the Puerto Rican legal system. To be sure, some Puerto Rican judges, as well as attorneys, have purposely used the common law tradition to formulate their political and ideological opinions and arguments. The common law tradition has provided Puerto Rican legal actors with an additional source of law that has been useful in situations where the civil law tradition has been silent or simply not as \*447 amenable to manipulation. This is one of the problems inherent in understanding legal transculturation on procedural or structural terms only.

Trías Monge has written one of the most comprehensive and interesting texts on the historical relationship between the common and civil traditions in the Puerto Rican legal system. Among other things, his book focuses on the ideological arguments and strategies used by judges in Puerto Rico since the U.S. occupation. Monge suggests that this relationship can be understood within the context of the adoption of four juridical fantasies of legal interpretation. He uses the notion of transculturation to describe these fantasies, and to further highlight the clashes between the U.S. common law and the Spanish civil law traditions. Trías Monge discusses these fantasies through a historical critique of the Puerto Rican Supreme Court's jurisprudence. Unlike Delgado Cintrón,

Trías Monge envisions a Puerto Rican legal system that can draw from both legal traditions in an appropriate and wise manner. The problem with Trías Monge's use of the term transculturation is that he is also clear that the Puerto Rican legal system need not be part of an independent national formation project. He is advocating for a mixed legal system that can exist in an autonomous condition within an ambiguous political relationship between the mainland and the island.

Trías Monge's genealogy begins with a discussion of "fantasy of a superior law," which can be located during the initial periods of the conquest of Puerto Rico by the U.S. military. This fantasy was informed by a "Manifest Destiny" ideology that characterized the Anglo-American common law tradition as the most civilized and advanced legal tradition available for the governance of a territory. It followed that the Anglo-American common law tradition provided superior resources for the resolution of disputes and the pursuit of justice. In some ways, this argument suggests that the Anglo-Saxon culture imbued the common law tradition with superior qualities to those of the "less civilized" Spanish civil law tradition. Under the tenets of this argument, the Spanish civil law would be summarily displaced in favor of U.S. common law. It is further presumed that the common law tradition would have an acculturating effect over the local judges, and other local legal actors, who would eventually adopt this transplanted legal culture.

Trías Monge further contends that the "fantasy of a universal law" was initially adopted in cases or instances where the civil law was silent on a particular issue. Under the tenets of this juridical fantasy, legal questions could be answered by common law jurisprudence. It is interesting to note that of all the legal fantasies, this one leaves the most room for the judge to infuse his personal ideology in a particular case. To be sure, the silence of law provides judges with a special opportunity to issue an opinion that reflects their own ideological beliefs while suggesting that these are rooted in common law. What is interesting about this legal fantasy, however, is that there is a presumed effort to address a question in a civil law forum. Of course, it must be noted that the judge's resort to the common law is ultimately meant to replace the civil law and not to complement it. This fantasy can also be understood as an effort to transplant Anglo-American legal principles into civil law tribunals.

Trías Monge argues that the clearest and most successful example of legal transculturation can be understood in terms of the "fantasy of legal identities." This fantasy is premised on the construction of two separate legal identities that are contingent on distinct jurisdictional forums. Thus, the federal courts, which generally handle public law issues, are governed by common law, while the local tribunals, which generally handle civil and criminal disputes, are governed by the \*448 civil code. However, as Trías Monge cleverly documents, judges in the local tribunals have often resorted to the common law tradition when the civil code has been silent on a particular matter of law, or in some cases when judges seek to justify a particular ideological stance on a matter of law. In some instances, local judges have also used common law jurisprudence to reinforce a civil law principle, and to simply assert a particular political interpretation. Yet, it must be noted that this fantasy is in fact premised on the procedural recognition of two separate legal traditions. This is important because any resulting hybridization of law can be attributed to the actions of the presiding judge, and not to the conceptualization of law in itself.

Perhaps the closest example of legal transculturation in Puerto Rico can be discerned from Trías Monge's discussion of the "fantasy of the wise mixture or blending of law." Accordingly, the court of last instance has the power to compare both legal traditions and assess which doctrines could best be used to solve a legal dispute. It follows that the court could solve a dispute by drawing from both legal traditions. This would result in a new jurisprudence that is informed by multiple traditions of law in a complimentary

fashion. Thus, Puerto Rican law could be understood as a "new" and distinct law that is informed by common and civil law traditions. This method of interpretation would enable judges to not only address questions of justice in innovative manners, but also to create a jurisprudence that is informed by the "best of both worlds." What Trías Monge does not expound upon, however, is the fact that this new law would only be applicable to Puerto Rico and only as long as it did not contradict federal constitutional jurisprudence. In some ways, this argument is reminiscent of a "state's rights" ideology to the extent that it seeks to treat Puerto Rican law as an autonomous legal culture that has a legitimate place within the federal system, while simultaneously dispelling the perception that the Puerto Rican legal system is merely colonial in character. More importantly, this fantasy would enable Puerto Rican legal actors to validate a legal culture that draws from multiple and "equally" valid legal cultures. It should also be noted that under the tenets of Trías Monge's argument, the judge would have a legitimate commitment to the pursuit of justice. To be sure, the judge would be willing to suspend his political and ideological beliefs in the interest of justice and the Puerto Rican legal system in general.

Fiol Matta's discussion of legal transculturation is rooted in an empirical study of the methods and paradigms employed by local jurists, law professors and law students to analyze Puerto Rican jurisprudence between 1987 and 1991. [\[FN20\]](#) She analyzed over 700 legal texts comprising Puerto Rican Supreme Court opinions, legal briefs, and articles produced by law students, in order to discern the discursive method employed to represent the Puerto Rican law. It is important to note that Fiol Matta relied on a post-structural method informed by the work of Michel Foucault to reflect on the discursive strategies used by the legal actors in question to make sense of the law. Yet, while Fiol Matta's research employs a more innovative approach to the study of the relationship between the common and civil law traditions, her notion of transculturation is informed by the previously discussed work of Trías Monge. [\[FN21\]](#)

According to Fiol Matta, there are some clear distinctions between these two legal traditions despite their shared Roman Law heritage. For example, whereas legal actors resort to case law and legal precedent to interpret and predict the *\*449* outcome of cases in the common law tradition, legal actors in the civil law tradition place more emphasis on the analysis of legal scholars and commentators. Notwithstanding these differences, Fiol Matta found that legal actors in Puerto Rico have a tendency to rely on case law and prior precedents to formulate legal strategies in civil law courts. To be sure, she suggests that Puerto Rican legal actors employ discursive methods and interpretations that are typical of a common law culture as a guide when preparing documents and legal strategies in civil law forums. Fiol Matta's argument states that transculturation explains the practice of using a common law paradigm and discourse to interpret the civil law in the Puerto Rican courts and the legal academy. Transculturation explains the discursive strategies adopted by legal actors to make sense of the Puerto Rican jurisprudence. Thus, by adopting common law discourses, Puerto Rican jurists and other legal actors reproduce U.S. ideologies in the island. More importantly the notion of transculturation can clarify some of the ways in which power is negotiated and reproduced in the island's legal system by clarifying which discursive strategies become hegemonic in the island's legal culture.

Fiol Matta's argument is important because it suggests that transculturation can be understood as part of a legal strategy to win cases. Presumably the jurist and legal actor will choose to adopt common law strategies and methods to make sense of the civil law jurisprudence without having to be acculturated to the common law tradition. Of course while there is a certain degree of choice we must also recognize that the Puerto Rican legal system operates within a U.S. legal system that is ultimately governed by a common law culture. It would be interesting, however, to explore whether jurists and other legal actors choose to adopt common law strategies in countries that are governed by a civil law tradition and culture. In any event, Fiol Matta's argument suggests that

the Puerto Rican legal system can be understood as a hybrid system informed by multiple legal discourses. More importantly, the common law culture permeates civil law spaces through the discursive strategies employed by legal actors who are seeking to win cases. This argument suggests that these legal traditions are merely discourses that are ultimately subject to the legal actor's ideology and pursuit of power.

Nazario Velasco's approach seeks to offer a post-colonial interpretation of the effects of the legal strategies employed by legal actors in Puerto Rico during the immediate aftermath of the War of 1898 and the early stages of the U.S. colonization projects. Unlike the procedural analysis of Delgado Cintrón and Trías Monge, Nazario Velasco's argument shifts the focus to the mutually constitutive relationship between law and society in the Puerto Rican court system during the immediate aftermath of the war, and on the efforts to "Americanize" the island's local courts. His project documents and interprets the strategies used by Puerto Rican attorneys to succeed in a local court system that was being transformed by U.S. imperialism. He demonstrates how local attorneys both subverted the court's ideological shift and simultaneously participated in their Americanization. To be sure, Puerto Rican attorneys trained in the civil law tradition often reproduced U.S. imperialism by employing methods of legal interpretation that were inimical to the common law tradition while seeking to further their own professional agendas.

Ironically Nazario Velasco adopts De Granda's definition of transculturation to describe the latter relationships. This is especially intriguing given Nazario Velasco's concern with a more innovative and creative understanding of the relationship between law and society as well as his concern with post-colonial theory. In fact it should be noted that his theoretical reflections are inconsistent with *\*450* De Granda's general framework. Notwithstanding tension in Nazario Velasco's argument, his overall project makes a number of important and refreshing contributions to the study of the relationship between two legal traditions and the Puerto Rican legal intelligentsia.

Nazario Velasco's argument suggests that legal actors could manipulate the process of legal acculturation in the pursuit of their personal and professional agendas. In other words, legal actors were not necessarily passive recipients of U.S. imperialist ideologies, but rather they were strategic handlers of the common law culture. They possessed a degree of autonomy and agency that enabled them to pursue particular agendas amidst a re-definition of the local legal system premised on the hegemony of an Anglo-American common law culture. In addition, Nazario Velasco's argument further emphasizes the role of translation in this process. To be sure, in order to implement U.S. laws these had to be translated from English to Spanish. The process of translating legal principles further allowed Puerto Rican legal actors to imbue the law with particular ideologies that mitigated the effect of U.S. imperialism. The translation of legal terms and categories allowed legal actors to choose terms that could be used in strategic ways. Thus, the process of translation resulted in the transformation of the common law culture and its effects on the legal profession in the island.

It follows that the transplantation of U.S. legal institutions and ideologies was contingent on their reception by Puerto Rican legal actors. In other words, this argument suggests that even unilateral efforts to acculturate the colony's legal intelligentsia could be subverted by the recipients of these legal narratives. Despite the fact that Puerto Rican legal actors were forced to function within a foreign legal culture, they also had a certain degree of agency to resist, transform and reproduce the externally imposed legal tradition. Puerto Rican attorneys participated in the formation of a new legal culture that was informed by the common law tradition and the Spanish civil law culture in which local legal actors were trained. In sum, legal transculturation is ultimately contingent on



the interpretations of its legal actors and on their ideological agendas despite the hegemonic power of one of its component legal traditions.

## Conclusion

First, it should be evident that Puerto Rican legal commentators and scholars have unilaterally misused and abused the notion of transculturation. Not only have they relied on an incorrect translation of this notion, but they have also neglected to incorporate the role of nation building. Transculturation, as coined by the Cuban intellectual Fernando Ortiz, is ultimately premised on the organic process of constructing a national identity. In the case of Puerto Rico, the relationship between the U.S. common law and the Spanish civil law traditions is ultimately contingent on the island's subordinated legal and political status. Puerto Rico, and its legal system, is ultimately subject to a legal hierarchy where the common law tradition reigns supreme. To use the notion of transculturation to describe historical formation of a Puerto Rican legal system, even an autonomous legal system, in the absence of an "independent" nation-building project is to abuse the notion of transculturation.

Despite its ideological heritage, the notion of transculturation provides interesting possibilities for the study of legal systems that are formed out of multiple <sup>\*451</sup> legal traditions. Moreover, despite the misuse of the notion by Puerto Rican legal scholars, their research in this arena is important because it demonstrates some of the key tensions that arise in places governed by mixed legal systems. As this paper suggests, legal transculturation can be understood as a political contact zone and/or a contested terrain where legal actors engage in the strategic formation of a new legal system that is informed by multiple legal traditions. This argument suggests that law can be understood as a collection of competing narratives strategically deployed by legal actors in the pursuit of their particular agendas. This argument further suggests that legal actors ultimately invent legal traditions.

It follows that legal transculturation can further shed some light on the ways in which the law contributes to the transformation of society by highlighting the ideological premises of competing legal traditions. To be sure, legal traditions are often shaped by distinct social and political ideologies. It is possible to understand how U.S. social and political ideologies have permeated into the Puerto Rican social fabric to the extent that we can understand the ways in which these common law ideologies have assumed a hegemonic position within the Puerto Rican legal system. By adopting common law principles to resolve social disputes in Puerto Rico, legal actors are participating in the re-constitution of a new Puerto Rican socio-legal narrative. The notion of transculturation can aid us in the understanding of how this process occurs.

## Footnotes:

[\[FNd1\]](#). Department of Politics, Ithaca College. I would like to thank the participants and commentators of the works-in-progress section of the LatCrit VII symposium for their helpful suggestions and comments. This paper is part of a larger ongoing research project on Legal Transculturation and Nation-Building in the Americas.

[\[FN1\]](#). Fernando Ortiz, *Cuban Counterpoint: Tobacco and Sugar* (Harriet de Onís, trans., 1995).

[\[FN2\]](#). *Id.* at 98.

[\[FN3\]](#). Mary Louise Pratt, *Imperial Eyes: Travel Writing and Transculturation* (1992).

[FN4]. Carmelo Delgado Cintrón, *Derecho y Colonialism: La Trayectoria Histórica del Derecho Puertorriqueños* (1988).

[FN5]. José Trías Monge, *El Choque de Dos Culturas Jurídicas en Puerto Rico: El Caso de la Responsabilidad Extracontractual* (1991).

[FN6]. Liana Fiol Matta, [Common Law and Civil Law in the Legal Method of Puerto Rico: The Transmission of Legal Discourse](#), 64 *Rev. Jur. U.P.R.* 501 (1995); Liana Fiol Matta, [Civil Law and Common Law in the Legal Method of Puerto Rico: Anomalies and Contradictions in Legal Discourse](#), 24 *Cap. U. L. Rev.* 153 (1995); Liana Fiol Matta, [El control del texto: Método jurídico y transculturación](#), 68 *Rev. Jur. U.P.R.* 803 (1999).

[FN7]. Rubén Nazario Velasco, *Discurso Legal y Orden Poscolonial: Los Abogados de Puerto Rico Ante el 1898* (1999).

[FN8]. Ortiz, *supra* note 1, at lviii.

[FN9]. *Id.*

[FN10]. Mark Tushnet, [Returning with Interest: Observations on Some Putative Benefits of Studying Comparative Constitutional Law](#), 1 *U. Pa. J. Const. L.* 325 (1998).

[FN11]. Jonathan M. Miller, [The Authority of a Foreign Talisman: A Study of U.S. Constitutional Practice as Authority in Nineteenth Century Argentina and the Argentine Elite's Leap of Faith](#), 46 *Am. U. L. Rev.* 1483 (1997).

[FN12]. Ortiz, *supra* note 1, at 98.

[FN13]. *Id.* at 103.

[FN14]. *Id.* at 102.

[FN15]. See *supra* note 4, at 430; *supra* note 5, at 3; *supra* note 7, at 6. Fiol Matta relies on Trías Monge's definition of the notion of legal transculturation.

[FN16]. Germán de Granda, *Transculturación e Interferencia Lingüística en el Puerto Rico Contemporáneo, 1898-1968* (1972).

[FN17]. *Id.* at 44.

[FN18]. *Supra* note 4, at introductory note.

[FN19]. *Id.* at 48.

[FN20]. *Supra* note 6, *El control del texto*, at 804.

[FN21]. *Id.*