

IN THE CUSTODY OF VIOLENCE: PUERTO RICO UNDER *LA MANO
DURA CONTRA EL CRIMEN*, 1993-1996

ARTICLE

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A. Crime and Punishment in Today's Puerto Rico..... 489

They have asked for war and war they will have. Let criminals know: our patience is over.

—Hon. Pedro Rosselló-González, Governor of Puerto Rico, in his address to the Commonwealth Legislature, February 13, 1993¹

I. DEATH IN THE TROPICS

HEADLINES CHRONICLING A WAVE OF VIOLENCE SWEEPING THE ISLAND WEL-
Hcomed me home. With the Caribbean breeze sneaking in through the window, the drone of Spanish radio newscasters in the background and the allergies that greet me whenever I touch down on Puerto Rican soil, I engaged in one of my most treasured homecoming rituals: reading the Sunday paper in my parents' bedroom. On June 2012, however, reports of violence hit closer to home than ever before. A seventeen year-old boy, beloved by many in my family, died after being shot in an attempted carjacking.

This brutal incident was no anomaly. Tragedies of this kind had been part of my daily news digest ever since I could remember. Growing up in Puerto Rico, I became immune to violence and accepted its persistence as the norm, natural and unavoidable, shielding myself in indifference. In August 2011, thousands of miles away from home, it had finally struck me: Puerto Rico's rampant violence was not ordinary. I was completing a summer research fellowship in Chicago when I came upon a stunning statistic —Los Angeles, city with more than eight million inhabitants, had 297 murders in 2010, while Puerto Rico, with a population of 3.7 million, reported more than 600 violent deaths in the first six months of 2011.²

The persistent possibility of violence defines everyday life in contemporary Puerto Rico. Throughout the late twentieth and early twenty-first centuries, as crime rates decreased exponentially in cities like Los Angeles and New York, Puerto Rico's murder rate continued to increase, peaking at 1,136 violent deaths in 2011.³

¹ Alex Figueroa, *Evidente el fracaso de la "Mano Dura" contra el crimen*, EL NUEVO DÍA, Mar. 14, 2013 (translation by the author), <http://www.elnuevodia.com/evidenteelfracasodelamanoduracontraelcrimen-1469568.html>.

² See Daniel B. Wood, *For Los Angeles, Fewest Homicides Since 1967. Why the drop?*, THE CHRISTIAN SCI. MONITOR, Jan. 4, 2011, <http://www.csmonitor.com/USA/2011/0104/For-Los-Angeles-fewest-homicides-since-1967.-Why-the-drop>; Gretchen Sierra-Zorita, *Drug Violence at America's other Southern Border*, WASH. POST, Nov. 24, 2011, http://articles.washingtonpost.com/2011-11-24/opinions/35282756_1_drug-violence-mexican-drug-wars-drug-seizures.

³ David Greene, *'Don't Give Up on Us': Puerto Ricans Wrestle with High Crime*, NAT'L PUB. RADIO, Feb. 7, 2013, <http://www.npr.org/2013/02/07/171071473/-don-t-give-up-on-us-puerto-ricans-wrestle-with-high-crime>.

How did the streets of an island fantasized as the epitome of paradise become no man's land?⁴ What has sustained such a violent social order? Which policies has the government enacted to guarantee public safety? These questions are the driving force behind this note. To generate answers, my research explores the state of criminality in contemporary Puerto Rico by focusing on the early 1990s, a turning point in local criminal justice administration with the enactment of the zero-tolerance, tough on crime policies regarded as *Mano Dura contra el Crimen* (Iron Fist Against Crime).

A. Crime in Puerto Rico: Statistics and Typology

An examination of crime in Puerto Rico must begin with an overview of contemporary murder rates. Statistics compiled and presented by Dora Nevares-Muñiz, a renowned Puerto Rican criminologist, reveal that the island has been home to hyper murder indexes during recent decades. In 1970, there were 7 murders per 100,000 inhabitants; in 1994—the year with the highest number of reported murders prior to 2011— there were 27.5.⁵ Between 1970 and 2009 the local murder rate increased 229%.⁶ To provide some perspective, Nevares-Muñiz points out that from 1990 to 2007, ironically much of the time during which *Mano Dura* was in place, the murder rate in Puerto Rico was three times that of the United States.⁷ In 2009, for example, Puerto Rico ranked as the tenth country with the highest murder index in the world; in 2008, the island's murder rate only lagged behind that of the District of Columbia.⁸

Puerto Rico's exorbitant number of annual murders is attributed to the drug trafficking industry that has pervaded in the country since the 1980s, leading some academics to claim the island is now a *narcoestado*, or narco-state.⁹ According to police records, most murders have been related to drug transactions, peaking in 1997—year in which *Mano Dura* was still active— when 83.3% of all murders were connected to the drug trade.¹⁰ The prevalence of drug trafficking in the country is, in many ways, driven by its central location in the Caribbean,

⁴ Just like New York City is known as the *Big Apple*, Puerto Rico is commonly referred to as the *Island of Enchantment*.

⁵ Dora Nevares-Muñiz, *El crimen* 13 (2011) (unpublished manuscript) (on file with author). Before 1994, the year with the highest murder rate was 1945, when there were 27.3 murders per 100,000 inhabitants. *Id.*

⁶ *Id.* at 14.

⁷ *Id.*

⁸ *Id.* at 17. In 2009, Puerto Rico was ranked behind El Salvador, Honduras, Jamaica, Guatemala, Venezuela, Trinidad & Tobago, South Africa, Colombia and Belize. *Id.*

⁹ Reinaldo Millán, *Expertos dicen que el País está a punto de convertirse en narcoestado*, PRIMERA HORA (Dec. 6, 2011), <http://www.primerahora.com/expertosdicenqueelpaisestaapuntodeconvertirseennarcoestado-589322.html>.

¹⁰ NEVARES-MUÑIZ, *supra* note 5, at 15.

described by José Martí as “the Vortex of the Americas.”¹¹ Puerto Rico is a major point of transport for, but not consumption of, drugs going from South America into the United States, given that only 3% of the cocaine that goes through the island remains for local intake.¹² For Joel Villa, another scholar who has studied the historical development of crime in Puerto Rico, drugs and criminality have become a single topic.¹³

Against a background where murder and drugs assume a symbiotic form emerges the profile of the typical Puerto Rican criminal offender. According to Nevares-Muñiz, individuals who engage in the bloodshed of *el narcotráfico* are often young males, residents of public housing, who dropped out of public school and abuse drugs.¹⁴ Because of the tight interconnectedness between socio-economic deprivation and drug usage, the island’s skyrocketing murder rate is attributed to this small group of individuals who engage in criminal activity repeatedly.¹⁵

The *Mano Dura* era unfolded from this recent history of continuous narco-violence. Throughout this article, I present a multidimensional narrative of *Mano Dura* that brings together the recent histories of Puerto Rico, the United States and Latin America.

B. Waging War on Crime: La Mano Dura contra el Crimen

In 1992, unforeseen murder indexes drove crime to the center of public anxiety and electoral politics. Framing his political aspirations as part of a crusade to attack the evils within Puerto Rico’s social fabric, doctor Pedro Rosselló-González, who governed the island from 1993 to 2001, promised constituents to reduce alarming crime rates through a zero-tolerance policy program christened *Mano Dura contra el Crimen*. After winning the elections of November 1992 and assuming office in January 1993, Rosselló quickly materialized his promise of *Mano Dura* to combat crime. From mere political discourse part of campaign propaganda, the *Mano Dura* program became a reality through policies that increased sentencing periods, reduced rehabilitation-focused initiatives for criminal offenders and promoted aggressive, more interventionist policing tactics. Setting aside *Mano Dura*’s more theatrical strategies, this article crafts the untold narrative of how the crime control program affected public discourse and institutions, using as case studies the provision of free counsel to Puerto Rican

¹¹ Ivelaw L. Griffith, *The Political Economy of Drugs in the Caribbean: Problems without Passports*, in *THE POLITICAL ECONOMY OF THE DRUG INDUSTRY* 106 (Menno Vellinga ed., 2004).

¹² DORA NEVARES-MUÑIZ, *EL CRIMEN EN PUERTO RICO: TAPANDO EL CIELO CON LA MANO* 151-52 (2008).

¹³ JOEL A. VILLA, *EL SUJETO CRIMINAL, CRIMEN Y CRIMINALIDAD EN PUERTO RICO: EL SUJETO CRIMINAL* 226 (2008).

¹⁴ Nevares-Muñiz, *supra* note 5, at 21. *Narcotráfico* is Spanish for drug trafficking.

¹⁵ *Id.*

indigents and the expansion of the state's carceral sphere.¹⁶ Although it has often been studied in isolation, I also examine how *Mano Dura*, and other criminal justice initiatives of the Puerto Rican state, interacted with greater policy debates taking place at the federal level in Washington D.C.

C. State of the Field: A Trans-American Study of Crime and Punishment

Crafting a narrative of *Mano Dura* is a transnational exercise that joins the history of Puerto Rico with that of the United States and the greater Latin American region. Puerto Rican *Nueva Historia* (New History) scholars have centered their work on assembling the island's history throughout the twentieth century. Their approach sees historical production as a medium to communicate incidents of abuse and prejudice that have occurred in the immediate past.¹⁷ To do so, they have focused on presenting the histories of women, urbanism and ideology since the 1950s in order to create a more cohesive portrayal of local society.¹⁸ Current *Nueva Historia* literature, however, lacks studies of how recent state programs have interacted with urban reality and ideology to reinforce politics that marginalize particular sectors of the polity. My assessment of *Mano Dura*, especially its discourse towards the criminal, and its impact upon legal aid organizations, contributes to this field and sheds light on dynamics crucial to a more holistic understanding of contemporary Puerto Rican society.

While drug-related violence and criminal activity in Puerto Rico resemble those of other Latin American countries, crime control programs, like *Mano Dura*—alongside institutional hostility to public defense models and the expansion of the carceral state—reverberate with developments that have occurred in the United States during the past three decades. The study of Puerto Rico's *Mano Dura* thus serves as an access point to important issues surrounding the study of multidimensional security and cross-national policy history between Latin America and the United States.

In studying the region's penal policies, Latin Americanists state that the "law produces and reformulates culture . . . and it shapes, and is shaped by larger processes of political, social, economic, and cultural change."¹⁹ Existing literature on crime and punishment across Latin America includes Puerto Rico within the larger context of the drug trade that has affected the region since the 1980s. Alt-

¹⁶ By *theatrical*, I refer to the highly visible strategies, such as the increased policing and National Guard occupations of public housing complexes that occurred early under *Mano Dura*. For Fernando Picó, a government's usage of theatrical strategies reveals that it is a weak state. See FERNANDO PICÓ, DE LA MANO DURA A LA CORDURA: ENSAYOS SOBRE EL ESTADO AUSENTE, LA SOCIABILIDAD Y LOS IMAGINARIOS PUERTORRIQUEÑOS 32 (1999).

¹⁷ FERNANDO PICÓ, EL DÍA MENOS PENSADO: HISTORIA DE LOS PRESIDARIOS EN PUERTO RICO (1793-1993) 15 (1994).

¹⁸ *Id.*

¹⁹ Carlos Aguirre & Ricardo D. Salvatore, *Introduction: Writing the History of Law, Crime and Punishment in Latin America*, in CRIME AND PUNISHMENT IN LATIN AMERICA 1-2 (Ricardo D. Salvatore et al. eds., 2001).

though none of these regional works approach the island's violence through a detailed discussion of the local *Mano Dura*, they do highlight the value of not studying Puerto Rico in isolation, but in conversation with the realities of other Latin American and Caribbean countries. For example, in *Crime and Citizen Security in Latin America*, political scientist Mark Ungar explains that Latin America is currently the world's most crime ridden region, seeing a 41% increase in murders during the 1990s alone.²⁰ Ungar connects exorbitant crime rates with the adoption of zero-tolerance, quasi-military tactics that exacerbated the "prevailing climate of fear, abuse and violence," while neglecting the real motors behind criminality.²¹

Other scholars have studied Latin America's current crime levels through what they consider as the importation of United States fashioned *tough on crime* strategies. Latin American policy analysts, Coletta Youngers and Eileen Rosin, affirm that the importation of United States drug control policies into Latin America over the past fifteen years had meager success in combating *narcotráfico* and instead resulted in corrosive consequences.²² The application of zero-tolerance strategies has invigorated patterns of human rights violations and corruption, while fueling crimes committed in the context of anti-drug operations. Youngers' and Rosin's approach, however, disregards the local incentives and circumstances that molded *Mano Dura* in Puerto Rico. Far from representing the unilateral imposition of U.S. anti-crime strategies cross-nationally, I suggest *Mano Dura* existed in a multilateral flux, interacting with both local and federal political developments unique to Puerto Rico in the 1990s.

In the United States, another burgeoning group of scholars has examined the punitive turn that would later inspire zero tolerance crime control programs across the Americas. In *Race to Incarcerate*, Marc Mauer explains that criminal justice policy was reimagined through iron fist in the 1964 Goldwater and 1968 Nixon campaigns, which "heralded the theme of 'law and order' for the first time in a national political context," leaving behind the immediate post-war focus on rehabilitation.²³ The rise of crime as a wedge issue in United States politics responded to opinion surveys revealing 81% of the public "believed law and order had broken down, [in part because of] 'Negroes who start riots' and 'com-

²⁰ Mark Ungar, *Crime and Citizen Security in Latin America*, in *LATIN AMERICA AFTER NEOLIBERALISM: TURNING THE TIDE IN THE 21ST CENTURY?* 171 (Eric Hershberg & Fred Rosen eds., 2006).

²¹ *Id.* at 172.

²² Coletta A. Youngers & Eileen Rosin, *The U.S. "War on Drugs": Its Impact in Latin America and the Caribbean*, in *DRUGS AND DEMOCRACY IN LATIN AMERICA: THE IMPACT OF U.S. POLICY* 1, 9 (Coletta A. Youngers & Eileen Rosin eds., 2005).

²³ MARC MAUER, *RACE TO INCARCERATE* 45 (rev. ed. 2006). Throughout this paper, I use *iron fist* and *tough on crime* interchangeably in reference to policies that hold increased punishment, either through heightened sentences or more aggressive policing, as key to fighting crime. See also Patricio G. Martínez-Llompert, *Because Every New Yorker Deserves Justice? Anti-Welfarism, the Punitive Turn, and the Eclipse of Public Defense: The Legal Aid Society of New York Under Fire, 1981-1983*, 9 MICH. J. OF HIST. 27, 29-30 (2013).

munists.”²⁴ According to Mauer, by the 1980s, the tough on crime mentality became normalized and social order was engineered through the “crime control apparatus [and] at the expense of social investments in communities.”²⁵ This expansion of criminal justice infrastructure has been dubbed by some as the “inward turn of militarization,”²⁶ or the waging of “war against the inner enemies”²⁷ in times of no major military mobilization abroad.

Following the arrival of crime at the center of United States political anxieties in the 1960s, specialists in carceral studies have deconstructed the subsequent growth of mass incarceration through the changes in penal policy ushered by the era. Historians Julilly Kohler-Hausmann and Jessica Neptune correlate mass incarceration with the hyper-punitive sentences and policing strategies part of the war on drugs declared by Nixon in 1971. One of the most evident reflections of the United States’ punitive turn was the 42% increase in expenditures, across all government levels, on criminal justice initiatives between 1971 and 1974.²⁸ On the Rockefeller Drug Laws of the 1970s, Kohler-Hausmann posits that, besides creating a pipeline into correctional facilities, this “punishing legislation worked to salvage . . . state legitimacy . . . [and] to rationalize . . . inequities spotlighted by the social unrest of the period.”²⁹ For Neptune, it was around the question of crime where “large battles over the welfare state, and policies on racial justice and poverty, were fought.”³⁰ My argument about Puerto Rico’s struggling public defense organizations and thriving correctional sector under *Mano Dura* adds to this conversation. By chronicling the struggle to secure public legal defense in a focused, local arena, I contend that cuts in social spending were in direct dialogue with a state discourse that held criminals as undeserving, thus legitimizing punitive growth while depressing public interest investments.

D. Mano Dura and the Creation of a Punitive State

Throughout the early and mid-1990s, the principal public defense office in the island, the Legal Aid Society and the Legal Services Corporation, faced severe financial constraints that resulted in strikes and layoffs, all unequivocal signs of institutional distress. Organizations like Legal Aid and Legal Services “serve indigent and lower-income groups-defined [for purposes of this article] as those

²⁴ MAUER, *supra* note 23, at 53.

²⁵ *Id.* at 55.

²⁶ MICHAEL S. SHERRY, *IN THE SHADOW OF WAR: THE UNITED STATES SINCE THE 1930S* 431 (1995).

²⁷ NILS CHRISTIE, *CRIME CONTROL AS INDUSTRY: TOWARDS GULAGS, WESTERN STYLE* 15 (2000).

²⁸ Tony Platt, *U.S. Criminal Justice in the Reagan Era: An Assessment*, 29 *CRIME AND SOC. JUST.* 59 (1987).

²⁹ Julilly Kohler-Hausmann, “*The Attila the Hun Law*”: *New York’s Rockefeller Drug Laws and the Making of a Punitive State*, 44 *J. OF SOC. HIST.* 72 (2010).

³⁰ Jessica Neptune, *The Making of the Carceral state: Street crime, the War on Drugs, and Punitive Politics in New York 1951-1973* 147 (Aug., 2012) (unpublished Ph.D dissertation, The University of Chicago) (on file with author).

who cannot afford to pay for legal assistance at its customary cost without suffering substantial deprivation of other needs—as well as other under-served sectors that cannot be addressed through market mechanisms.”³¹ In the following sections, I explore how the hyper-punitive turn in the government’s stance towards criminal justice, which inflated the market of indigents in need of free legal counsel, incentivized the financial limitations and controversies that affected public defender organizations during the *Mano Dura* era. In particular, I assess the impact of changes in political rhetoric and public perceptions about criminality on funding for the groups. My project then considers how, concurrently with state funding cuts for public defense organizations, the Rosselló administration strengthened its punitive apparatus, most evidently through the establishment of new correctional facilities. These simultaneous developments occurring in the public defense and correctional sectors point at a central dynamic that defined Rosselló’s administration: the embrace of *punitive spending* over *social spending* under an ideological scheme that held indigents as undeserving members of the Puerto Rican polity. Despite facing repeated fines from the federal government for prison overcrowding, the Rosselló government continued to pipeline indigents into the criminal justice apparatus by way of its *Mano Dura* and compromised their constitutional guarantee to adequate legal counsel as it rejected requests from the struggling legal aid organizations for increased financial support.

The first section deconstructs *Mano Dura* not only as an anti-crime initiative but also as a mentality that guided governmental action outside the realm of crime. Having established this vision of *Mano Dura* as a matrix of greater state policy, in the second and third sections respectively, I discuss its distinct, yet intertwined interactions with the public defense movement and correctional industry.

II. GOVERNANCE A LA MANO DURA

Isn’t the ad nauseam repeated slogan of “mano dura contra el crimen,” in itself, a further promotion and justification of violence? Violence, even when inflicted by the “virtuous” against the “corrupted,” is, in the end, violence.

—EL NUEVO DÍA, April 2, 1995³²

A. *Mano Dura* Beyond Temporality and Theatrics

As headlines chronicling unprecedented bloodshed inspired public hysteria and stained the Island of Enchantment, doctor Pedro Rosselló-González saw

³¹ Robert J. Rhudy, *Expanding Access to Justice: Legal Aid Models for Latin America*, in JUSTICE BEYOND OUR BORDERS: JUDICIAL REFORMS FOR LATIN AMERICA AND THE CARIBBEAN 53 (Christina Biebesheimer & Francisco Mejía eds., 2000).

³² Editorial, *Mayor el surco entre ricos y pobres*, EL NUEVO DÍA, Apr. 2, 1995 (translation by the author), <http://www.adendi.com/archivo.asp?num=184384&year=1995&month=4&keyword=Mayor%20el%20surco%20entre%20ricos%20y%20pobres>.

opportunity. Rosselló, an Ivy League trained pediatric surgeon and then aspiring governor, promised to “put the house in order, by doing what needs to be done,” in the months that preceded the Puerto Rico general elections of November 1992.³³ Rosselló centered the brunt of his political effort around interrelated issues, such as crime, violence and social order. To restore national order, Rosselló set out to wage a war against crime: “The struggle and eventual triumph are necessary because our homeland is being threatened by criminals havened under an obsolete police force and judicial system that allows them to attain what they want at the expense of your life and mine.”³⁴ Through crisp television ads and fiery speeches that promised “mano dura contra el criminal” if elected governor, Rosselló promised to make crime control the priority of his administration.³⁵

After assuming office in January 1993, Rosselló wasted little time in delivering on his commitment to fight crime with an iron fist. *Mano Dura* unfolded through policies that increased the Penal Code’s sentencing provisions, reduced rehabilitation-focused initiatives for criminal offenders and allowed more interventionist policing tactics.³⁶ The most evident strategies implemented by the government and police to fight crime with a *Mano Dura* were to control access into public housing complexes, assumed epicenters of Puerto Rican criminality, and activate the National Guard to optimize policing.³⁷ Restraining the entrance into public housing complexes, or *caseríos*, was achieved through both the construction of access gates and establishment of National Guard and state police manned posts inside these neighborhoods.³⁸

Historical discussions about *Mano Dura* have focused on its most theatrical strategies, like the National Guard’s occupation of *caseríos* that began in the summer of 1993. During Rosselló’s first term (1993-1996), local police and National Guard officers occupied seventy-six of the island’s more than three hun-

³³ Alfredo Carrasquillo, *Políticas de otredad: Criminales, miedos y promesas de orden en el Puerto Rico contemporáneo*, in *ENTRE EL CRIMEN Y EL CASTIGO: SEGURIDAD CIUDADANA Y CONTROL DEMOCRÁTICO EN AMÉRICA LATINA Y EL CARIBE* 230 (Lilian Bobea ed., 2003). Rosselló obtained a medical degree from Yale and then completed his specialization at Harvard. In his memoirs, Rosselló writes that while a student in Boston he volunteered in the Massachusetts National Guard, a position through which he helped restore “law and order, and reduce chaos and violence,” at the heyday of the Civil Rights Movement. I PEDRO ROSELLÓ, *A MI MANERA* 11 (2012) [hereinafter *ROSELLÓ, A MI MANERA*] (translation by the author).

³⁴ Carrasquillo, *supra* note 33, at 232 (quoting Pedro Rosselló, President, New Progressive Party, Acceptance Speech at Guayanilla (June 17, 1991)) (translation by the author). This text reveals how Rosselló invoked patriotism and civil duty to frame his proposed program against crime. In future research, it would be interesting to examine the full implications of using nationalist discourse to legitimize punitive policies, such as those of the *Mano Dura*.

³⁵ For examples of the televised ads used during the Rosselló campaign to announce *Mano Dura*, see Notiqló, *Pedro Rosselló gobernador 92 Mano Dura contra el crimen 4*, (Dec. 21, 2010), <http://www.youtube.com/watch?v=IRneQ-BzXHk>; Notiqló, *Pedro Rosselló gobernador 92 Mano Dura contra el crimen*, (Dec. 21, 2010), http://www.youtube.com/watch?v=KTC3jk_uGNU&feature=related.

³⁶ NEVARES-MUÑIZ, *supra* note 12, at 183.

³⁷ Nevares-Muñiz, *supra* note 5, at 36. See also VILLA, *supra* note 13, at 226.

³⁸ See VILLA, *supra* note 13, at 226.

dred public housing complexes,³⁹ an action examined in terms of its marginalizing effect upon the residents. According to Villa, for example, the occupation of *caseríos* as part of *Mano Dura* is just one episode in the public housing complexes' long history of marginalization. Villa explains that urban planners located these complexes near affluent neighborhoods to stimulate their residents' ambition for becoming wealthy. Nonetheless, Villa claims that living next to the prosperous classes has only helped *caserío* residents realize how marginalized they are, an unchangeable reality of socio-economic deprivation which will persist unless they take action to revert their poverty "through either legal or illicit means."⁴⁰ The police occupation and access restrictions during *Mano Dura* accentuated marginalization by transforming public housing into the poster child image of the island's criminality, along with emphasizing how privileged socio-economic classes live in a separate, protected private world, while disadvantaged sectors are ever-vulnerable to governmental intervention.⁴¹

Examining this militarization of public spaces, however, does not provide the complete story of *Mano Dura*. This section fills gaps in extant literature by retelling the story of *Mano Dura*'s less theatrical yet more submerged and institutional implications. Starting with its birth as political discourse, I trace the development of *Mano Dura* throughout Rosselló's 1992 campaign and its implementation from 1993 to 1996. In doing so, I make two larger claims. First, that *Mano Dura* was not just an anti-crime policy program, but rather a mentality that guided governmental action beyond the realm of crime. Far from the spectacle of intensified policing, the *Mano Dura* mentality informed urban development and the allocation of funds under Rosselló's inaugural administration. Second, despite the temporality of strategies like the National Guard's occupation of public spaces, *Mano Dura* also ignited reform proposals for the island's police department and the Penal Code that still reverberate more than a decade after Rosselló's governorship. This scenario—in which *Mano Dura* became a driving force in the creation of state policy, prioritizing punitive over social spending—set out the context for the Rosselló's administration hostility towards Puerto Rico's legal aid organizations and support for an expanded carceral state that I explore in subsequent sections.

B. Origins: Mano Dura as Campaign Rhetoric and Political Discourse

No longer indifferent to peaking levels of indiscriminate violence, more than 80,000 Puerto Ricans marched down the streets of San Juan on October 7, 1991, calling for effective governmental and civilian action against crime.⁴² Surpassing

³⁹ Carlos Romero Barceló, *The Insular Territories; Puerto Rico*, in THE ALMANAC OF AMERICAN POLITICS 1773 (2000).

⁴⁰ VILLA, *supra* note 13, at 243 (translation by the autor).

⁴¹ *Id.*

⁴² *Id.* at 227.

the 600 murders of 1990, the 817 violent deaths reported in 1991 marked the most violent year to date in Puerto Rican history.⁴³ Against this scenario of record-breaking crime, and a hyper-aware citizenry clamoring for change, Rosselló developed his stance on crime control as he vied for the island's governorship.

Positioned at the frontline of Rosselló's platform in 1992, rising crime rates nurtured the development of *Mano Dura's* precursors earlier in the twentieth century. According to historian Fernando Picó, it was in the 1970s when the Puerto Rican government changed the focus of its penal system from prevention and rehabilitation to zero-tolerance. Picó claims that the expansion of criminal incidence propelled the island's governors, beginning with Luis A. Ferré (1969-1973), and continuing through Rafael Hernández-Colón (1973-1977), to create a discourse which established that the main purpose of prisons was to punish and alienate criminals from society.⁴⁴ Like Rosselló's *Mano Dura*, Ferré's and Hernández-Colón's discourse of zero-tolerance translated into tougher sentences, together with increased restrictions for preliminary release under probation and parole.⁴⁵

Picó concurs with Nevares-Muñiz, who sees *Mano Dura's* precursors in the amendments for tougher sentencing included in Puerto Rico's revised Penal Code of 1974.⁴⁶ In a time when the Puerto Rican people were highly concerned about rising criminality, Nevares-Muñiz explains that changing the Penal Code was the government's logical reaction to public demand for swift anti-crime action. Such amendments also signaled the prevalent conservative current in the United States that fueled zero-tolerance strategies—disregarding all structural causes of criminality—against the criminal, “who is regarded as a rational person who consciously opts to disrupt the social order.”⁴⁷ It was not until the electoral season of 1992, however, that record-breaking levels of violent crime made public safety the issue of most concern for Puerto Rico's voters.⁴⁸ *Mano Dura* became the centerpiece of Rosselló's campaign, as both he and his party capitalized on the anxieties of the Puerto Rican electorate.

While Rosselló and his opponents in the 1992 elections agreed about the need to increase police salaries, they presented divergent proposals to combat crime.⁴⁹ Both Victoria Melo Muñoz and Fernando Martín, Rosselló's main contenders in the race of 1992, supported preventive crime control initiatives that

43 Iván Román, *Puerto Rico vive su año más violento*, EL NUEVO HERALD, Nov. 1, 1992, at 1A.

44 PICÓ, *supra* note 17, at 57.

45 *Id.* at 31, 57.

46 NEVARES-MUÑIZ, *supra* note 12, at 192.

47 *Id.* at 193 (translation by the autor). By structural conditions, I refer to the collection of social, economic, familial and educational circumstances which are commonly conceived as determinant factors of whether or not individuals engage in criminal activity.

48 Román, *supra* note 43. In a pre-election poll, 80% of respondents identified crime as their most important concern. Juan Manuel García-Passalacqua, Editorial, *¿Estado de sitio en Puerto Rico?*, EL NUEVO HERALD, June 11, 1993, 13A.

49 Román, *supra* note 43.

increased rehabilitation program options for drug addicts and educational opportunities for high-risk youth.⁵⁰ Nonetheless, as he rallied across the island's seventy-eight municipalities appearing on stage with blue boxing gloves and to the beat of the theme song from the *Rocky* films, Rosselló promised voters to double the police force in order to secure a "mano dura contra el crimen."⁵¹ During his first speech as the New Progressive Party's official gubernatorial candidate in June 1991, Rosselló claimed that:

[T]o fight crime, Puerto Rico needed an army that is new and progressive, that carries a uniform of truth and of unity, that disregards hate and vengeance; an army of modern, innovative and different weapons. For unity and peace to return. We need to wage war. Because the purpose of this war will be to achieve peace. We need to create a hurricane, since tranquility will only come after the storm.⁵²

Even though it preceded the official presentation of the *Mano Dura* initiative and lacked any policy details, Rosselló's acceptance speech already evidenced the saber rattling tone that later distinguished his public rhetoric on crime. Rosselló's language placed law-breaking citizens outside the polity, as enemies defined by otherness that the government needed to attack in order to restore public safety. This language marginalized *criminals* and defined them as individuals not affected by the greater challenges facing Puerto Rican society but, rather, as the main cause of such challenges. It is this metaphoric and often-undetailed discourse that complicates how *Mano Dura* was perceived at the time and how it has been understood since its inception. By framing the war against criminals as a *hurricane*, or precondition, for *peace and unity to return*, Rosselló appeared to craft his anti-crime program as a temporary measure.⁵³ Lacking the hyperbole and war-like tone of his speeches, the text of Rosselló's party platform, however, suggests otherwise.

In the platform's section on public safety, Rosselló and his New Progressive Party proposed to amend the national Penal Code in order provide for life sentence without parole for those found guilty of murder of correctional or police officers, life sentence without parole for drug dealers, and life sentence without parole for recidivist perpetrators of violent crimes.⁵⁴ In the same section, the party also expressed support for the creation of controlled access to urbanizations, condominiums and public housing complexes, and the elimination of the

⁵⁰ *Id.* Muñoz was the candidate for the Popular Democratic Party supporting the island's Commonwealth status, while Martín ran under the Puerto Rican Independence Party, which advocates for the dissolution of Puerto Rico's political relationship with the United States. In the 1990s, these three parties constituted Puerto Rico's main electoral organizations. *Id.*

⁵¹ *Id.*

⁵² *Id.* (quoting Pedro Rosselló, President, New Progressive Party, Acceptance Speech at Guayanilla (June 17, 1991)) (translation by the author).

⁵³ *Id.*

⁵⁴ PARTIDO NUEVO PROGRESISTA, PROGRAMA DE GOBIERNO 1993-1996 146 (1992).

right to public housing and other government welfare benefit programs to citizens convicted of drug trafficking.⁵⁵ Detailed policy descriptions of this kind were absent from most of Rosselló's campaign statements regarding *Mano Dura*. This disconnect between how Rosselló's crime control plan was presented prior to the election highlights the importance of conceptualizing *Mano Dura* not as a set of temporary strategies, but as a philosophy that informed policies of both short and long duration. The reach of *Mano Dura's* zero-tolerance philosophy extended from its approach to policing and military occupation of public housing complexes, to tougher sentences for violent crimes; this holistic lens attends *Mano Dura's* intricacies and significant impact upon its moment in Puerto Rican history.

Despite discrepancies in its presentation to the public throughout the campaign, Rosselló's public statements about *Mano Dura* were marked by the constant presence of war-like discourse. To understand how Rosselló's administration was able to activate the National Guard in the summer of 1993, bolstering significant public support, it is necessary to first examine the extent to which war-talk was used to point at the urgency of battling crime. Mary Dudziak, author of *War Time: An Idea, Its History, Its Consequences*, argues that including references to war in public discourse can generate public support for policies that would be otherwise politically untenable.⁵⁶ Rosselló's persistent use of war-like rhetoric as his administration prepared to implement different strategies under *Mano Dura* supports Dudziak's thesis. During *Mano Dura's* official launch in February 1993, Rosselló said that:

[T]his war needs all of you. Because this is a war waged by all Puerto Ricans against those who want to wrong this country, those who want to poison our youth, who want to kill our police officers and who do not permit our families to be at ease in their own homes... The war against crime just started and I am convinced that when finished, we will have returned peace to all Puerto Rican families.⁵⁷

Framing the fight against crime as a war appealed to inspire civilian support by including all law-abiding Puerto Ricans within the government's battalion, violent criminals and those involved with the drug industry were cloaked under otherness, as not being real Puerto Ricans and as part of a matrix of social havoc. Moreover, Rosselló's statements invoked images of a society undergoing an extent of chaos that justified the implementation of extreme practices to reestablish order. By dividing Puerto Ricans along enemy lines, and defining societal problems like crime and drug usage through a rhetoric of chaos, Rosselló and his

⁵⁵ *Id.* at 147. Connection of zero-tolerance on crime with anti-welfare sentiments is another subject that could be explored in future research endeavors.

⁵⁶ Interview with Mary Dudziak, Historian, Ithaca, N.Y. (Sept. 13, 2012).

⁵⁷ VILLA, *supra* note 13, at 225 (quoting excerpt from Rosselló's speech) (alteration in original) (translation by the author).

government set the stage for increased public acceptance of a military solution to an inherently social problem.⁵⁸

In a 1997 conference on the state of civil rights in Puerto Rico, attorney Judith Berkman traced the origins of Rosselló's war-infested discourse to Reagan's 1982 declaration of his war on drugs.⁵⁹ According to her, Reagan was the first to give a military focus to a problem that until then had been considered as belonging to the legal sphere. The similarities between Rosselló's and Reagan's discourse with regards to crime and drugs, however, should not be exaggerated. At first glance, the *Mano Dura* philosophy appears to reject state responsibility for combating the root causes of crime in the vein of James Q. Wilson, a view held by both Villa and Nevares-Muñiz.

In the seminal *Thinking About Crime*, Wilson, then a professor of government at Harvard, argues that crime is most efficiently tackled by more aggressive punishment and not by remediating structural factors, such as socio-economic deprivation. According to him, criminals are rational actors, just as everyone else, acting according to continuous cost-benefit analysis, or their assessment of "rewards and penalties."⁶⁰ If crime is to be deterred, Wilson claims, the government needs to assure that the sanctions for criminal behavior, in terms of both arrests and sentencing, become more likely than the would-be benefits of committing felonies.⁶¹ Through arguments and statistics supporting the effectiveness of deterrence, Wilson expected his book to entice policy makers into creating measures that show "how the probability or severity of a possible punishment will affect the behavior of persons who might commit a serious crime."⁶² Wilson was part of a school of conservatives, both in academia and politics, who:

[S]tarted to challenge what they saw as the liberal orthodoxy about crime: that the key to fixing crime was to change the conditions of social deprivation that were its "root causes"; that controlling lawless behavior by the police was as important as, or even more important than, controlling street crime; that punishment should be designed primarily to rehabilitate than to incapacitate or to deter; and that the public's fear of crime was exaggerated and reflected racial fears stirred up by demagogues.⁶³

For political scientist Mary Katzenstein, Wilson was ultimately effective in fulfilling his purpose, since "there has not been a more influential work than

⁵⁸ Judith Berkan, *The Use of the Military in the 'War on Drugs' a Threat to our Soul*, 7 PUNTO Y COMA 72 (1998).

⁵⁹ *Id.*

⁶⁰ JAMES Q. WILSON, *THINKING ABOUT CRIME* 109 (2013).

⁶¹ *Id.* at 110.

⁶² *Id.* at 115.

⁶³ MARK KLEIMAN, *WHEN BRUTE FORCE FAILS: HOW TO HAVE LESS CRIME AND LESS PUNISHMENT* 11 (2009).

Thinking About Crime behind the harshening of criminal justice practices in the United States during the last three decades.”⁶⁴

Nonetheless, Rosselló’s anti-crime plan, as rationalized and discussed in his official party platform, demonstrates that *Mano Dura* did not follow the ideals of the conservative criminal justice movement spearheaded by Wilson. The New Progressive Party’s section on public safety stated that the causes, prevention and eradication of crime are elements we must consider to combat with a *mano dura y efectiva* (with effective iron fist).⁶⁵ Among the matrixes of crime, the party listed the disintegration of families, chronic unemployment, lack of opportunities for the youth, and school dropout rates.⁶⁶ While Rosselló’s public rhetoric about criminals characterized them as inherently violent individuals only to be deterred through harsher punishment, his party’s platform recognized the need of remediating structural socio-economic inequalities to effectively address the roots of crime.

Ultimately, the causes listed on Rosselló’s platform traced criminal behavior to both individual agency and structural conditions, a notion that counters the hard-line zero tolerance philosophy of the United States during the 1980s, which attributed criminality to individuals’ inherent traits, and disregarded the impact of larger ecological factors. Thus, it is inaccurate to blindly thread Rosselló’s *Mano Dura* into the greater narrative of conservative criminal justice philosophies born in the United States.⁶⁷ Far from being the mere import of U.S. inspired *tough on crime* practices, *Mano Dura* was a phenomenon that responded to a configuration of politics and social anxieties unique to late twentieth century Puerto Rican society. The unprecedented initiatives enacted by the Rosselló administration as it began to wage war against crime in early 1993 exemplified *Mano Dura*’s singularity.

C. Public Strategies: The Theater of *Mano Dura*

“[F]or the first time, the authorities [in Puerto Rico] and in Washington said, American military reserve units have been routinely deployed to assist local police in fighting crime,” read a *New York Times* piece about the state of crime in Puerto Rico in late summer 1993.⁶⁸ The article chronicled a historic development seen in the island since May 29th of the same year: the presence of National

⁶⁴ Mary Katzenstein, Professor, Cornell University, Class Lecture: James Q. Wilson: Responsibility and Harsh Punishment (Sept. 13, 2011).

⁶⁵ PARTIDO NUEVO PROGRESISTA, *supra* note 54, at 138.

⁶⁶ *Id.*

⁶⁷ This is the analytical focus of both NEVARES-MUÑOZ, *supra* note 12, and VILLA, *supra* note 13, throughout their respective sections on *Mano Dura* in *El crimen en Puerto Rico* and *Crimen y criminalidad*.

⁶⁸ Larry Rohter, *National Guard Joins Puerto Rico Police on Beat as Crime Rises*, N.Y. TIMES, July 28, 1993, <http://www.nytimes.com/1993/07/28/us/national-guard-joins-puerto-rico-police-on-beat-as-crime-rises.html?module=Search&mabReward=relbias%63Ar>.

Guard officers roaming the streets, along with the police, to assist the government wage its war against crime.⁶⁹ Days later, the National Guard began to occupy public residential complexes of high criminal incidence in urban areas; by early September, 1,000 of the 8,000 members of the Puerto Rican National Guard were deployed to communities across the island.⁷⁰ In his first state of the nation address, Rosselló called these National Guard officers his *soldiers against crime*.⁷¹ The National Guard's civil deployment was the first visible strategy enacted under Rosselló's promised *mano dura contra el criminal*. Between 1993 and 1996, 25,000 families were reached by this strategy in seventy-nine of the island's housing projects.⁷² The government's logic was to prolong the occupations until violent crime decreased in occupied communities.

The National Guard's activation catered to the cry of public opinion. In early May 1993, a national poll revealed that one in five Puerto Ricans had been victims of crime in the past two years, while 75% of respondents believed that Puerto Rico was in a deeply troubling situation.⁷³ To restore public safety, 80% of those polled asked for the National Guard to be put into the streets.⁷⁴ By summertime, residents of crime-infested communities told the press they would rather cede their civil liberties to the state, than continue being prisoners of their own households because of violence.⁷⁵

As the National Guard and police officers established posts across the metropolitan area's toughest communities, the Rosselló administration repeatedly justified what some regarded as their *militarization of civil life*.⁷⁶ Even before the National Guard's deployment, Rosselló told national and international media outlets that his crime control plan was a "simple thing . . . [that] promised to establish a balance more favorable to the public security forces. . . . [and that since] this is a war . . . the only way to provide security is to strengthen law enforcement."⁷⁷ For colonel José A. Rosa, a National Guard officer who oversaw public housing interventions, the occupation of crime-ridden *caseríos* had "the sole purpose of guaranteeing security, peace and tranquility for the residents of

69 *Id.* See also García-Passalacqua, *supra* note 48.

70 Christopher Marquis, *Preocupado por operativos antidrogas*, THE ASSOCIATED PRESS, Feb. 7, 1994; Rohter, *supra* note 68.

71 Pedro Rosselló, Governor of Puerto Rico, *La situación del Estado* (Mar. 23, 1993) [hereinafter Rosselló, *La Situación del Estado*].

72 Shannon Gravite, *McCollum investiga crimen en Puerto Rico*, LA PRENSA, Sept. 26, 1996 (translation by the author).

73 García Passalacqua, *supra* note 48.

74 *Id.*

75 Christopher Marquis, *Batalla campal contra el delito en Puerto Rico*, EL NUEVO HERALD, Sept. 9, 1993, at 1A.

76 See Berkan, *supra* note 58.

77 Larry Rohter, *As Crime Rises, Puerto Ricans Retreat*, N.Y. TIMES, Jan. 13, 1993, <http://www.nytimes.com/1993/01/13/us/as-crime-rises-puerto-ricans-retreat.html?pagewanted=print>.

such communities.”⁷⁸ Rosselló and his administration framed the National Guard’s presence among civilians not as a simple theater to convey Puerto Ricans that crime was being addressed, but rather as a *real compromise* to restore peace where violence reigned.⁷⁹ In a 1994 interview with the *New York Times*, Rosselló claimed he was pleased with the police occupation of public residential complexes since the “civil rights of those who lived under the threat of drug trafficking have been re-established.”⁸⁰

Rosselló’s assertion, however, is discredited by events and studies that took place as the occupations advanced. For example, in five of the intervened *caseríos*, residents organized public protests to condemn civil rights violations and indiscriminate verbal harassment by the police and National Guard.⁸¹ Signaling the same sense of marginalization, a study conducted by political scientist Rafael Albarrán after the occupations revealed that *caserío* residents described police interventions as experiences of confinement and lessened civil rights.⁸² Although criminal incidence inside complexes declined during the occupation periods, it quickly increased after the police and National Guard abandoned their posts, another reality that questions the extent of truth in Governor Rosselló’s belief that *Mano Dura* liberated *caserío* residents from the threat of narco-violence.⁸³ Arguments about civil rights transgressions aside, the mere heightened presence of military officials in civilian dealings reconfigured Puerto Ricans’ understanding of governance: the population became accustomed to the use of the military for typically civilian pursuits, while the children’s daily exposure to military power inside *caseríos* flawed their perceptions of social order.⁸⁴

Ironically, the *caserío* communities, whose liberties were compromised during the occupations, traditionally represented the largest support base for political parties like that of Rosselló. In the seminal *El arrabal y la política*, anthropologist Rafael Ramírez observed that poor urban masses provide much political support to “leaders who advance policies that only further socio-economic inequality.”⁸⁵ Since its founding in the 1960s, Rosselló’s New Progressive Party had proposed conservative policies, generally anti-working class and critical of civil liberties, while still managing to attract low income voters, who perceived the

⁷⁸ José Rosa Carrasquillo, *Función de la policía frente al problema de drogas*, 7 PUNTO Y COMA 67, 69 (1998) (translation by the author).

⁷⁹ Marquis, *supra* note 75.

⁸⁰ Mireya Navarro, *The Guard Takes on the Gangs*, N.Y. TIMES, July 13, 1994, <http://www.nytimes.com/1994/07/13/us/the-guard-takes-on-the-gangs.html?pagewanted=all&src=pm>.

⁸¹ VILLA, *supra* note 13, at 248.

⁸² *Id.* See also Raquel Rivera, *Rapping Two Versions of the Same Requiem*, in PUERTO RICAN JAM: RETHINKING COLONIALISM AND NATIONALISM 248 (Frances Negrón-Muntaner & Ramón Grosfoguel eds., 1997).

⁸³ Navarro, *supra* note 80.

⁸⁴ See Berkan, *supra* note 58.

⁸⁵ RAFAEL L. RAMÍREZ, *EL ARRABAL Y LA POLÍTICA* 153 (1977) (translation by the author).

party as the only one that could improve their living conditions.⁸⁶ Given this paradoxical political alignment, Ramírez described members of the “urban underclass” as “conservative and lacking revolutionary potential.”⁸⁷ His claims parallel the views of popular political commentator Juan Manuel García Passalacqua who, in a 1993 editorial, characterized the island’s incessant violence as an “insurrection without political motivations.”⁸⁸

D. Beyond Theatrics: Institutional Transformations Ushered by Mano Dura

Given their visibility, the National Guard’s activation and hyper-policing of the streets characterize most narratives on *Mano Dura*.⁸⁹ To encapsulate *Mano Dura* within the theater of militarized streets, nonetheless, fails to grasp the complexity of an anti-crime initiative whose influence extended far past the realm of crime. The *Mano Dura* did not only devolve into public strategies destined to fight crime, but represented a set of beliefs, or philosophy, that informed policy and legislation in other areas. The *Mano Dura*’s logic of zero-tolerance interacted with the island’s changing urban panorama, and informed budget allocations and proposals for legal reform under Rosselló’s inaugural administration. While interventions in *caseríos* were temporary, the rise of gated communities and private security, along with the use of legal mechanisms to perpetuate *la mano dura contra el criminal*, shaped Puerto Rico’s social landscape as it approached the 21st century.

Amidst Puerto Rico’s mesmerizing and freedom-inspiring natural landscape, residential communities exist behind gates. A drive along the island’s coast reveals that a majority of neighborhoods are guarded by security officers and by controlled access gated entrances. For people like myself, who grew up in the island during the 1990s, these private communities invoke safety and order, while public spaces remain the realm of danger and violence. The *Mano Dura* era provides answers for understanding how the spatial divide between the public and private became the predominant paradigm of residential development in today’s Puerto Rico.⁹⁰

Although controlling access into private residential communities became legal in 1987, the growth of these communities and the private security sector saw an unparalleled boom beginning in late 1992, as *Mano Dura* became law of the

⁸⁶ *Id.* at 149, 151.

⁸⁷ *Id.* at 10 (translation by the author).

⁸⁸ García Passalacqua, *supra* note 48.

⁸⁹ As previously mentioned, both Nevares-Muñiz and Villa focus their assessments of *Mano Dura* on the highly visible occupations of public housing complexes, without regarding how the policy interacted with and affected state institutions. For more details about their arguments, see NEVARES-MUÑIZ, *supra* note 12; VILLA, *supra* note 13.

⁹⁰ Fernando Picó writes that the rise of controlled-access communities as the norm of private residential development in Puerto Rico symbolizes the people’s distrust for state effectiveness in assuring their public safety. See PICÓ, *supra* note 16, at 10.

land.⁹¹ After the Commonwealth's Senate voted unanimously in March 1992 to ease restrictions on the right of communities to control access, "[i]t did not take long before many upper-middle class neighborhoods were installing electric fences, concrete walls and street barriers [along with] hiring armed guards."⁹² By early 1993, "[n]ewspapers and magazines [were] full of advertisements for new planned communities hidden behind concrete barriers and protected by armed guards," in what *The New York Times* described as a "sharp departure from the Caribbean tradition of gregarious outdoor living."⁹³

The proliferation of gated communities translated into expanded business for private security companies. Wackenhut PR, the island's largest security company, reported a 40% increase in revenues, based on the sale of security cameras and home alarms, from 1991 to 1992.⁹⁴ Manuel Calas, one of Wackenhut's managers, said at the time that "it's a sad reality what we are experiencing . . . what for some is a disgrace, for us is a flourishing business."⁹⁵ The *Mano Dura* intensified the private security craze as it emphasized the urgency of closing streets, installing alarms and carrying weapons in response to an environment of heightened insecurity.⁹⁶ Those who equipped themselves with alarms, cameras, and weapons followed Rosselló's vision of his anti-crime efforts, earlier described, as a "war [that] needs of all you. Because this is a war waged by all Puerto Ricans against those who want to wrong this country."⁹⁷ An editorial in *El Nuevo Día* condemned the upsurge of gated communities and the private security industry as it "perpetuated the farce that the bad live in public housing complexes, while the good live in closed neighborhoods," a notion that only exacerbates the stratification of Puerto Ricans across socio-economic lines.⁹⁸

Mano Dura also affected penal legislation, where Rosselló aspired to institutionalize the zero-tolerance approach that distinguished his public safety tactics. In his 1993 state of the nation address to the local legislature, Rosselló presented his proposed changes to the Penal Code: life sentence without parole for recidivist offenders and for those charged with the murder of police or correctional officers.⁹⁹ The amended Penal Code would also require strict mandatory sentencing for anyone convicted of committing a crime with a firearm.¹⁰⁰ To contin-

⁹¹ Ley de control de acceso, Ley Núm. 21 del 20 de mayo de 1987, 23 LPRA §§ 64-64h (2008 & Supl. 2014); Rohter, *supra* note 77.

⁹² Rohter, *supra* note 77.

⁹³ *Id.*

⁹⁴ Román, *supra* note 43.

⁹⁵ *Id.* (translation by the author).

⁹⁶ See Rohter, *supra* note 77.

⁹⁷ VILLA, *supra* note 13, at 225 (quoting excerpt from Rosselló's speech) (translation by the author).

⁹⁸ Editorial, *supra* note 32 (translation by the author).

⁹⁹ Rosselló, *La Situación del Estado*, *supra* note 71.

¹⁰⁰ *Id.*

ue institutionalizing the war against criminals within the legal order, Rosselló and the legislative majority of his New Progressive Party scheduled a constitutional referendum to decide if the absolute right to bail, guaranteed under the Constitution of Puerto Rico, should be eliminated.¹⁰¹ Opponents of the suggested constitutional changes argued the referendum was nothing but a deceit by Rosselló and his party to make Puerto Ricans believe that legal measures were being taken to address criminality.¹⁰² Ultimately, the right to bail remained intact, as 53.6% of voters rejected the amendment.¹⁰³ The intention of limiting the right to bail of criminal offenders was interpreted as another effort by the Rosselló administration to create “more boundaries and distance, more divisions and compartments, which sooner or later feed the frustration and cynicism that only bring more violence.”¹⁰⁴ Just like Rosselló’s campaign discourse and subsequent military interventions in public housing complexes distanced law-breakers from the rest of society at a conceptual and spatial level, the failed constitutional amendment promised to further alienate the criminal on a legal basis.

While it only intensified and interacted with patterns in residential development already occurring independently, the idea of *Mano Dura*, along with its urgency of waging war against crime, played a direct role in shaping Rosselló’s proposed budget for his first term as governor. Sustaining the government’s gigantic bureaucratic infrastructure, Rosselló believed, impeded his administration from access to enough resources to fight crime, improve health care and provide excellent public education to Puerto Rican children.¹⁰⁵ Rosselló also understood that to achieve his administration’s goals of reduced crime rates, efficient public health care and job growth he had to wrestle with a *chaotic fiscal reality* most evidently manifested in the shape of a multi-million dollar deficit.¹⁰⁶

Nonetheless, the government’s increasing debt did not stop the Rosselló administration from incrementing the amount of state resources fed into the island’s public security apparatus. On the contrary, the need of delivering the promised *Mano Dura* and fighting crime with the most aggressive means required maximizing the budget allocated to public safety. For the 1993-1994 fiscal year, Rosselló committed 14% of the state budget to the *protection and security* of Puerto Ricans.¹⁰⁷ Public safety agencies received the highest allocation of funds for active use after the broad category of *social development* in which the

101 See Derogación de la Ley Núm. 82 del 13 de agosto de 1994, Ley Núm. 85 de 13 de marzo de 2003, 2003 LPR 276-77.

102 Victor García-San Inocencio, *La eterna ausente*, EL NUEVO DÍA, July 25, 1994, <http://www.adendi.com/archivo.asp?num=163249&year=1994&month=7&keyword=la%20eterna%20ausente>.

103 See 2003 LPR at 277.

104 García-San Inocencio, *supra* note 102 (translation by the author).

105 Rosselló, *La Situación del Estado*, *supra* note 71 (translation by the author).

106 *Id.*

107 *Id.*

Rosselló administration placed services like public education and health.¹⁰⁸ In his first state of the nation address, Rosselló announced that, with regards to the assigned budget for security agencies, “no other programmatic area would receive such a decisive infusion of funds and resources.”¹⁰⁹ The budget assigned 80 million dollars to the police department, a 20% increase from the previous year, of which 5 million dollars were destined to the acquisition of 1,000 new police vehicles.¹¹⁰ Under the same budget, the National Guard saw a 16% rise in its operative budget.¹¹¹ While funds for social and municipal services were limited and tight-fistedly distributed, the *Mano Dura*’s logic prioritized the allocation of resources for the public security sector. Put more succinctly, Rosselló’s first budget as governor approached increases in public spending with a *Mano Dura*, except for resources destined to guarantee the success of *Mano Dura* itself.

E. La Mano Dura and the Birth of Puerto Rico’s undefended

A few months ago, the delinquents . . . were called *scum*.

—EL NUEVO DÍA, April 2, 1995¹¹²

In his 1993 State of the Nation address, Rosselló claimed that it was necessary to speak about peace in order to quiet the sound of weapons.¹¹³ But neither an absent language of peace nor the abundance of war-like discourse were able to silence the gunshots. A year into the implementation of *Mano Dura*, in 1994, Puerto Rico saw its highest murder rate to date, with 995 violent deaths, or 27.5 murders per 100,000 individuals.¹¹⁴ While crimes went down across the continental United States thanks to programs that emphasized case resolution and community policing, *Mano Dura* only appeared to generate more violence.¹¹⁵

A predominant mentality of governance during Rosselló’s inaugural administration, *Mano Dura* had multiple implications that contextualize how it interacted with public defense organizations from 1993 to 1996. Under the *Mano Dura*, the state estranged from the polity those who engaged in criminal activity across different dimensions. Rosselló’s war-like discourse placed criminals in the collective imagination as enemies of Puerto Rican society. The occupation of *caseríos* and boom of private gated communities physically separated those perceived as law-breakers, while proposals of penal and constitutional reform hoped to further distance *criminals* from their fellow citizens in legal terms. At the

108 *Id.*

109 *Id.* (translation by the author).

110 *Id.*

111 *Id.*

112 Editorial, *supra* note 32 (translation by the author).

113 Rosselló, *La Situación del Estado*, *supra* note 71.

114 See NEVARES-MUÑIZ, *supra* note 12, at 9-10.

115 Lilian Rivas, *La isla del encanto nublada por el crimen*, EL DIARIO LA PRENSA, July 6, 1997.

same time, the *Mano Dura's* logic of hyper-punishment and *crime as war* essentially delineated the allocation of funds under Rosselló's governorship. In the following section, I explore how the *Mano Dura's* alienation of delinquents and budget priorities affected, compromised and restrained the constitutional guarantee to free legal counsel of Puerto Rican criminal indigents.

III. PUBLIC DEFENSE ECLIPSED

The spectacle of injustice blurs the notion of justice; the sense of goodness is shattered by the persistence of wrongdoing and scandal is killed by the habit of scandal.

—Eugenio María de Hostos¹¹⁶

A. A Crisis of Public Defense, a Crisis of Justice

*Demands to Double the Number of Attorneys at Legal Aid.*¹¹⁷ *More than 100,000 Indigents Could Lose Legal Representation in Civil Cases.*¹¹⁸ *Civilians Protest the Dismissal of Legal Services Staff.*¹¹⁹ Throughout the early 1990s, newspaper headlines chronicled a Puerto Rican public defense movement in crisis. Case-loads across the island's multiple legal offices for indigents reached record highs, yet financial support remained stagnant. While the local Legal Aid Society and the Legal Services Corporation struggled to provide adequate representation for Puerto Ricans in need, Rosselló's attorney general, Pedro Pierluisi, announced the acquisition of an additional 12 million dollars in federal funds to support the expansion of the island's criminal justice apparatus under the *Mano Dura* platform.¹²⁰

As argued in the previous section, far from just being an anti-crime initiative, *Mano Dura* was a philosophy that shaped Rosselló's greater state policy during his inaugural administration as governor from 1993 to 1996. In the early 1990s, unprecedented murder rates positioned crime at the forefront of public

¹¹⁶ INSTITUTO DE CULTURA PUERTORRIQUEÑA, PARA TODOS LOS DÍAS: HOSTOS AFORISMOS 35 (1987) (translation by the author) ("El espectáculo de la injusticia hace perder la noción de la justicia; muere la noción del bien por la repetición del mal y mata al escándalo el hábito del escándalo". Eugenio María de Hostos, known as *The Citizen of the Americas*, was a Puerto Rican intellectual, lawyer and educator who lived from 1839 to 1903).

¹¹⁷ Waldo Covas-Quevedo, *Piden redoblar abogados en Asistencia Legal*, EL NUEVO DÍA, Oct. 12, 1993, at 16.

¹¹⁸ Sofía Muñoz, *Servicios Legales hasta fin de año*, EL NUEVO DÍA, Sept. 30, 1995, <http://www.adendi.com/archivo.asp?num=214120&year=1995&month=9&keyword=servicios%20legales%20hasta%20fin%20de%20a%F10>.

¹¹⁹ See Nilka Estrada-Resto, *Piden utilizar el despido como último recurso*, EL NUEVO DÍA, Nov. 15, 1995, <http://www.adendi.com/archivo.asp?num=219814&year=1995&month=11&keyword=Piden%20utilizar%20el%20despido%20como%20%FAltimo%20recurso>.

¹²⁰ Leonor Mulero, *Refuerzo federal para la mano dura*, EL NUEVO DÍA, May 6, 1996, at 8 [hereinafter Mulero, *Refuerzo federal*].

anxiety, which Rosselló capitalized upon by *waging a war against crime* and assuming a hyper-punitive stance towards criminal justice. A 1995 article in the *University of Puerto Rico Law Review* by Alfonso Ramos described Rosselló's criminal justice platform "like that of all former gubernatorial administrations, [as] moving towards increasing the oppressive component of Criminal Law."¹²¹ Ramos recognized, nonetheless, that Rosselló's *Mano Dura* was unprecedented in the extent to which it was publicized and in the unforeseen wave of penal legislation that it unleashed.¹²²

Policies crafted by Rosselló's legislature to enhance the island's criminal justice apparatus included increases to police salaries, the possibility of domiciliary arrest for those charged with minor offenses and the elimination of parole for repeated offenders.¹²³ Effective July 1, 1993, all police officers would receive a monthly raise of \$200 until the 1996-1997 fiscal year.¹²⁴ As increased resources were fed into the police department, however, members of the local bar association—who had praised the legislature's decision of allowing minor offenders to be released under house arrest—criticized the government's refusal to increase funding for the Corrections Department reentry program as more inmates returned to the streets.¹²⁵ Bar association members also contested the government's limiting of parole for recidivists because it was based on "the premise that [recidivists] could not be rehabilitated and that [therefore] society must protect itself from them through permanent incarceration."¹²⁶ These pieces of legislation are just three examples of the punitive, anti-rehabilitation mentality that marked Rosselló's criminal justice policy. However, beyond exemplifying the government's tough on crime stance, legislation that increased police funding while denying additional resources for reentry programs translated into an embrace of punitive spending over social spending. This punitive logic of public spending had a two-fold effect upon distinct Puerto Rican institutions: it debilitated the island's public defense organizations, while expanding its correctional sector, all during the first Rosselló administration.

Building upon my understanding of *Mano Dura* as an overarching philosophy of governance, this section explores the diverse, multi-sectorial challenges experienced by Puerto Rican public defense organizations between 1992 and 1996. In so doing, it explores how *Mano Dura*, a crime control program at its core, interacted with and redefined the landscape of the island's legal institutions. I first present the history of the public defense movement in the United States to contextualize the constitutional guarantee to free counsel for Puerto

¹²¹ Alfonso Ramos-Torres, "Mano Dura" contra . . . ¿quién?: La legislación de seguridad pública de 1993, 64 REV. JUR. UPR 251, 303 (1995) (translation by the author).

¹²² *Id.* at 305.

¹²³ *Id.* at 271, 275, 283.

¹²⁴ *Id.* at 271.

¹²⁵ *Id.* at 275.

¹²⁶ *Id.* at 285 (citation omitted) (translation by the author).

Rican indigents. Then, I examine the financial difficulties experienced by the local Legal Aid Society, the Legal Services Corporation and the court-appointed public defender program in relation to the government's zero-tolerance stance towards crime. Throughout the entire section, I devote particular attention to tracing the political developments occurring at the federal level that interacted with *Mano Dura* and also affected the state of Puerto Rican public defense institutions.

B. Legal Trajectory of Public Defense in Puerto Rico and the United States

"[To] promote justice for economic indigents . . . [and] safeguard their equal protection under the law while augmenting their faith in justice," the Puerto Rican Legal Aid Society opened its doors in 1955, becoming the island's first major public criminal defense institution.¹²⁷ Until then, legal representation for Puerto Rican criminal indigents had been provided by the court system's public defender assignment program, under which court officers assigned lawyers to assume indigent legal representation on a rotating, pro-bono basis.¹²⁸ Clients of the local Legal Aid Society were typically residents of "the slums, where there . . . [was] high criminal activity and unemployment; they . . . [were] people with low education levels, who . . . [were] often already in prison when referred to the 'Society'"¹²⁹ The Society's financial woes were not entirely new news in the early 1990s. Since the late 1970s, as Society employees began to unsuccessfully advocate for increased funds to provide more effective indigent representation, legal scholars and commentators observed an alarming trend: the growing lack of concern, among the Puerto Rican government and island attorneys, for guaranteeing equal access to justice.¹³⁰

The legal representation of Puerto Rican indigents is safeguarded under both the local and federal constitutions. As a Commonwealth of the United States, Puerto Rico's legal system is subject to the federal Bill of Rights.¹³¹ The Constitution of the Commonwealth of Puerto Rico, enacted in 1952 after the electorate approved its relationship with the United States as a commonwealth, echoes the Federal Constitution's Sixth Amendment in that "the accused shall enjoy the right . . . to have the assistance of counsel for his defense" in all criminal prosecutions.¹³² These constitutional guarantees, however, were compromised by Federal Supreme Court jurisprudence for most of the twentieth century. Until the

¹²⁷ Teresita Picó-Silva, *La Sociedad de Asistencia Legal: ¿Un problema de responsabilidad profesional o del derecho a representación legal? Pueblo v. Santiago*, 47 REV. JUR. UPR 677, 677 (1978) (translation by the author).

¹²⁸ *Id.* at 681.

¹²⁹ *Id.* at 682 (citation omitted) (translation by the author).

¹³⁰ *Id.* at 703; Ramos-Torres, *supra* note 121, at 255.

¹³¹ Picó-Silva, *supra* note 127, at 698. See also FERNANDO PICÓ, *HISTORIA GENERAL DE PUERTO RICO* (2006) (illustrating a survey of Puerto Rican history since pre-Columbian times).

¹³² U.S. CONST. amend. VI. See Picó-Silva, *supra* note 131, at 698-99.

1960s, free counsel for criminal indigents was only constitutionally mandated in capital, and a limited number of other federal, offenses.¹³³ Under such legal precedent, the state was not mandated to provide legal representation for indigent felons who faced charges at the state or city level.

Nonetheless, the public legal defense movement acquired great impetus during the Civil Rights Era. In the 1963 ruling of *Gideon v. Wainwright*, the federal Supreme Court determined that the right of an indigent defendant in a criminal trial to have the assistance of counsel is “a fundamental right, essential to a fair trial.”¹³⁴ Convicting an indigent without legal assistance, the Court ruled, constituted a violation of the Fourteenth Amendment’s due process clause. In delivering the Court’s opinion, Justice Hugo Black claimed “reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled [*sic*] into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”¹³⁵ After *Gideon*, city and state governments across the United States were mandated to subsidize charities or other organizations working to represent indigents accused of serious crimes.¹³⁶

Following *Gideon* and the greater transformative spirit of the era, scholars agreed that, during the 1960s and 1970s, public interest law became a significant force in the legal profession.¹³⁷ The availability of public defense for indigents came to be regarded as crucial in other legal matters outside the criminal practice. For instance, in 1974, Congress founded the Legal Services Corporation to provide funds for the civil defense of indigents across the country with an initial budget of \$321 million.¹³⁸ The Corporation, born from President Johnson’s Office of Economic Opportunity, espoused the philosophy that legal services should be part of an “overall antipoverty effort . . . [and] [t]hat the law could be used as an instrument for orderly and constructive social change, as lawyers for the civil rights movements were doing.”¹³⁹ However, by the late 1970s and early 1980s, the public interest law movement had lost strength, as its critics became more vocal and financial support halted.¹⁴⁰ In 1980, newspaper articles spoke of a “perceptible change in the mood of the country.”¹⁴¹ A deteriorating economy and the

133 *Gideon v. Wainwright*, 372 U.S. 335 (1963).

134 *Id.* at 340.

135 *Id.* at 344.

136 Tom Goldstein, *At 100, Legal Aid Strives to Live Within Budget*, N.Y. TIMES, March 6, 1976, at 24.

137 See David Luban *et al.*, *Political Legitimacy and the Right to Legal Services*, 4 BUS. & PROF. ETHICS J. 43, 44 (1985).

138 *Id.*

139 Alan W. Houseman, *Legal Aid History*, in POVERTY LAW MANUAL FOR THE NEW LAWYER 18, 19 (2010), available at <http://web.jhu.edu/prepro/law/Pre-Law.Forms.WordDocs/Public.Interest.Law.1.pdf>.

140 Laurence Lynn, *Social Services and the State: The Public Appropriation of Private Charity*, 76 SOC. SERV. REV. 58 (2002).

141 David E. Rosenbaum, *Aid for Public Interest Lawyers Drops: Trend to Less Regulation Collected \$1.5 Million*, N.Y. TIMES, Jan. 5, 1980, at 8.

promise of more liberalized markets made civilians less willing to support issues like environmental protection and civil rights, causes traditionally embraced by proponents of public interest law.¹⁴² Growing state hostility towards indigent defense crystallized in 1981 when the Reagan administration pushed to abolish the entire Legal Services Corporation.¹⁴³

Although Congress ultimately rejected legislation to abolish the Legal Services Corporation, the beliefs at the heart of Reagan's disdain for government-funded public defense are worth examining as they were based on his understanding of criminality. In a message announcing federal initiatives against drug trafficking and organized crime, Reagan spoke about the emergence of "a new privileged class in America . . . of repeat offenders and career criminals who think they have a right to victimize their fellow citizens with virtual impunity."¹⁴⁴ These criminals, Reagan said, did not fear punishment, since, until his administration, the American legal system had been based on a "utopian [philosophy of] human nature that [sees] man as primarily a creature of his material environment."¹⁴⁵ He also said that:

By changing this environment through expensive social programs, this philosophy holds that government can permanently change man and usher in an era of prosperity and virtue. . . . [I]ndividual wrongdoing is seen as the result of poor socioeconomic conditions or an unprivileged background. This philosophy suggests . . . that society, not the individual, is to blame.¹⁴⁶

For Reagan, however, Americans rejected this philosophy as they entered the 1980s through their support of stringent sentencing laws to reassert their belief in that "right and wrong do matter . . . that evil is frequently a conscious choice, and that retribution must be swift and sure for those who decide to make a career preying on the innocent."¹⁴⁷ The improved resources provided by his administration to law enforcement agencies aimed to counter the emphasis on protecting the rights of criminals born in the 1960s.¹⁴⁸ The Reagan administration perceived the increased funding of public safety policies as a balancing act against the constitutional guarantees acquired by felons during the Civil Rights

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Ronald Reagan, President of the United States of America, Remarks Announcing Federal Initiatives against Drug Trafficking and Organized Crime at the Department of Justice (Oct. 14, 1982), available at Gerhard Peters & John T. Woolley, THE AMERICAN PRESIDENCY PROJECT, <http://www.presidency.ucsb.edu/ws/?pid=43127> (last visited Mar. 2, 2015).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Ronald Reagan, President of the United States of America, Radio Address to the Nation on Proposed Crime Legislation (Feb. 18, 1984), available at Gerhard Peters & John T. Woolley, THE AMERICAN PRESIDENCY PROJECT, <http://www.presidency.ucsb.edu/ws/?pid=39541> (last visited Mar. 2, 2015).

Era. Under these terms, Reagan's discourse estranged criminals from the polity, positioning them as enemies of law-abiding citizens. Beyond *defunding the left*, abolishing the Legal Services Corporation, would also signify the institutional alienation of criminals from civilian life and compromise the ability of these citizens to exercise their constitutional rights.

While effective in outlining the movement's origins and initial successes, existing literature on the development of public interest law barely touches upon the challenges it faced across the United States beginning in the 1980s. Literature on the subject discusses opposition to public legal defense under Reagan in the context of prevalent anti-welfare attitudes, disregarding the impact of ideologies born from the punitive turn in criminal justice policy. According to sociologist Robert Sauté, the Legal Services Corporation's funding request process came *under threat* with the eclipse of liberalism in the late 1970s.¹⁴⁹

This is Sauté's only comment devoted to the impact of rising conservatism upon indigent defense providers. Similarly, Nan Aron writes that the public interest movement proved its resiliency by surviving the 1980s "inflation, defunding by foundations and the government, attacks on its legitimacy from New Right spokespersons, and attempts by the Reagan administration to undermine the charitable status of its activities."¹⁵⁰ In Aron's view, the Reagan administration followed a multi-dimensional strategy, consisting of slashing federal budget along with appointing administrators aligned with their government's larger vision, in order to gradually abolish social programs—like the Legal Services Corporation—which it regarded as undesirable.¹⁵¹

My following narrative of Puerto Rico's public defense organizations enhances, and establishes a more direct dialogue, between the histories of hyper-punitive criminal justice and public interest law in late twentieth century. Policies and ideologies rarely exist in isolation, justifying the need to understand how developments at the federal level interacted with public defense institutions in Puerto Rico. This understanding of federal dynamics will be particularly illuminating for my assessment of the challenges faced by Puerto Rico's Legal Services Corporation. My history of the challenges faced by the Legal Aid Society, the Legal Services Corporation and the court-appointed public defender program in the early 1990s reveals that *Mano Dura's* normalization of a discourse that degraded the criminal and legitimized the prioritization of punitive spending over social spending ultimately imperiled the constitutional promise of public legal defense for Puerto Rico's indigents.

149 ROBERT SAUTÉ, FOR THE POOR AND DISENFRANCHISED: AN INSTITUTIONAL AND HISTORICAL ANALYSIS OF AMERICAN PUBLIC INTEREST LAW, 1876-1990, 136, (2014). See also Martínez-Llompарт, *supra* note 23, at 33.

150 NAN ARON, LIBERTY AND JUSTICE FOR ALL: PUBLIC INTEREST LAW IN THE 1980S AND BEYOND 5 (1989).

151 *Id.* at 14.

C. *Visions of Austerity and Hyper Punishment: Public Defense Under Fire, 1993-1996*

The Legal Aid Society of Puerto Rico was the first of the island's public defense offices to evidence organizational distress as Rosselló completed his first year in office. In October 1993, the Society's Executive Director, Benigno Alicea, called for an additional 3 million dollars in funds from the local government in order to increase staff and balance rising workloads.¹⁵² Alicea hoped to double the number of Society staff attorneys from 65 to 130 as means of reducing to 150 the monthly caseload of each lawyer, a quantity recommended by external consultants.¹⁵³ Society staff attorneys attended 24,600 cases, of which 20,800 were criminal lawsuits, between 1992 and 1993.¹⁵⁴ While Alicea advocated for increased government support, Leonides Díaz, a member of the Commonwealth House of Representatives and a Rosselló political supporter, initiated a legislative investigation and financial audit against the Society on grounds of fund mismanagement by its board of directors.¹⁵⁵ Representative Díaz did not acknowledge any merit in Alicea's push for enhanced funding. The challenges to effective indigent representation ignited by higher arrest rates under *Mano Dura*, Díaz thought, were not a legitimate rationale for incrementing the Society's financial resources.¹⁵⁶

In 1994, the crisis of public legal defense services in Puerto Rico was signaled most obviously by changes in the court-assigned public defender program. An article in the *University of Puerto Rico Law Review* claimed that "deficiencies in the provision of free legal services to criminal indigents [were accounted for by a] vicious cycle . . . of increased criminal activity, which then translates . . . into a higher probability of arrests."¹⁵⁷ Such a probability of increased arrests was inflated by the *Mano Dura* platform as the state "selected, not only the conducts and actions to be penalized, but also the individuals to be criminalized" through its forced occupation of low income housing complexes and other public spaces.¹⁵⁸ In this panorama, commentators observe that "[Legal Aid Society] attorneys, along with those who regularly accept court assignments, react with concern and insist in promoting initiatives that could improve their disadvantaged position as public defenders."¹⁵⁹

¹⁵² Covas-Quevedo, *supra* note 117.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *See id.*

¹⁵⁷ Angel M. Cuevas-Trisán & Julio de la Rosa-Rivé, *La designación de abogados de oficio en Puerto Rico: Condiciones inconstitucionales para el ejercicio de la abogacía*, 63 REV. JUR. UPR 729, 731 (1994) (translation by the author).

¹⁵⁸ Ramos-Torres, *supra* note 121, at 305.

¹⁵⁹ Cuevas-Trisán & De la Rosa-Rivé, *supra* note 157, at 732 (translation by the author).

Amidst the rising indigent market being pipelined into the criminal justice apparatus by *Mano Dura*'s policing practices, the court system's public defender assignment program faced additional challenges after the local Supreme Court's 1993 ruling in *Ramos Acevedo v. Tribunal Superior*.¹⁶⁰ All attorneys admitted to the Puerto Rican bar were traditionally eligible to serve as counsel to criminal indigents under the court system's public defender assignment program. However, in *Ramos Acevedo*, the island's highest court ruled to limit eligibility for the public defender program only to criminal attorneys on grounds that they were most qualified to assume such representation.¹⁶¹

Reacting to this ruling, legal commentators and media observers asserted that the practice of representing criminal indigents had entered a *stage of crisis*.¹⁶² The Court's sole dissenter, Associate Justice Negrón García, deemed the majority's opinion as unconstitutional, because to him the ethical dimension of indigent representation is in its nature a task to be accomplished by all attorneys.¹⁶³ Negrón García understood that all controversies about the provision of public defense to indigents were centered on determining "who should assume its economic burden," a responsibility assigned to the state by the Supreme Court in its *Gideon* ruling.¹⁶⁴ Ironically, members of the Court's majority, despite limiting the public defender assignment program to criminal attorneys, also recognized the responsibility of all Puerto Rican lawyers to assume the representation of indigents as it is an "obligation [arising] implicitly from the nature and eminently public function of the legal profession."¹⁶⁵

With a destabilized Legal Aid Society and court-assigned public defender programs, the crisis of Puerto Rican public defense climaxed when the federal government considered abolishing the Legal Services Corporation. In 1995, Democrats and Republicans in Congress came together under President Clinton's mantra of ending *welfare as we know it*,¹⁶⁶ and proposed to slash federal funds for varied social benefits programs, including Medicaid, Head Start schools, and the Legal Services Corporation.¹⁶⁷ Across the United States, millions of indigents depended on the Legal Services Corporation for free counsel in civil cases, including more than a 1,000 in Puerto Rico.¹⁶⁸

¹⁶⁰ *Ramos Acevedo v. Tribunal Superior*, 133 DPR 599 (1993).

¹⁶¹ *Id.* at 610.

¹⁶² Cuevas-Trisán & De la Rosa-Rivé, *supra* note 157, at 731.

¹⁶³ *Id.* at 739.

¹⁶⁴ *Id.* at 758 (translation by the author).

¹⁶⁵ *Ramos Acevedo*, 133 DPR at 613 (translation by the author).

¹⁶⁶ Bill Clinton, *How We Ended Welfare, Together*, N.Y. TIMES, Aug. 22, 2006, http://www.nytimes.com/2006/08/22/opinion/22clinton.html?_r=o.

¹⁶⁷ Michael Wines, *Cómplices los demócratas de los recortes*, EL NUEVO DÍA, Sept. 29, 1995, <http://www.adendi.com/archivo.asp?num=213938&year=1995&month=9&keyword=complices%20los%20democratas%20de%20los%20recortes>.

¹⁶⁸ Muñoz, *supra* note 118.

While awaiting details of Congress's final cuts to the Corporation's budget, in late September and early October 1995, Harry Anduze, president of the Puerto Rican Bar Association, lobbied local legislators to sponsor bills that would increase support for, and guarantee the continuity of, Puerto Rican public defense organizations.¹⁶⁹ Anduze told *El Nuevo Día* that the Rosselló administration had the obligation of supporting public defense offices given their promise of improving access to justice by opening new local and district courts.¹⁷⁰ He also said that without attorneys "the indigents of this country can perhaps go to the courts, but will not have anyone to represent them."¹⁷¹ Like the theatrical occupation of public housing complexes under *Mano Dura*, Rosselló's judiciary reform was no more than theater and pretense. Just as activating the National Guard and occupying public spaces of high criminality did not buffer violence, reducing restrictions for civilian access to the courts remained meaningless without providing additional resources to the public defenders representing indigent citizens.

Prior to congressional announcements of final budget cuts, by mid November of 1995, directors of the Puerto Rico Legal Services Corporation had already let go of ninety-seven non-attorney staffers, including secretaries and paralegals, a decision that generated public protests by the Corporation's clients.¹⁷² The final Congressional package assigned the Puerto Rico Legal Services Corporation 5 million dollars less in funds for the 1996 fiscal year.¹⁷³ In a bipartisan attempt to safeguard the Corporation's stability, legislators Zaida Hernández, of the New Progressive Party, Severo Colberg, of the Popular Democratic Party, and David Noriega, of the Puerto Rican Independence Party, presented a bill to increase fines for traffic violations by 15 dollars as means of fundraising 2 million dollars and supporting the civil public defense office amidst budget reductions.¹⁷⁴ The House of Representatives, whose majority was composed by members of Rosselló's New Progressive Party, rejected the bill over claims that it was politically

169 *Id.*

170 *Id.* See also ROSSELLÓ, A MI MANERA, *supra* note 33, at 206 (containing Rosselló's memoirs of his eight years as governor of Puerto Rico from 1993 to 2000). Rosselló states that as a government official his principal goal was to empower all Puerto Ricans to exercise their civil rights to the fullest and advance the island's welfare. To exercise such rights, however, Rosselló believed citizens had to fulfill their responsibilities, as "individuals who are responsible for their acts and what they do with their lives." *Id.* at 107-08. Therefore, under Rosselló's articulation of citizenship, rights are not absolute, but conditional. Since they were prepared retrospectively and do not necessarily reflect his views from the early 1990s when *Mano Dura* was implemented, I decided not to include excerpts from Rosselló's memoirs within my main argument.

171 Muñoz, *supra* note 118 (translation by the author).

172 Estrada-Resto, *supra* note 119.

173 Gretchen Coll-Martí, *Pide alza en las multas de tránsito para costear a Servicios Legales*, EL NUEVO DÍA, June 15, 1996, <http://www.adendi.com/archivo.asp?num=228053&year=1996&month=6&keyword=Pide%20alza%20en%20las%20multas%20de%20tr%20Einsito%20para%20costear%20a%20Servicios%20Legales>.

174 *Id.*

dangerous to raise fines in election year.¹⁷⁵ Opposition to such a minor increase in fines stands as an oxymoron with the Rosselló administration's willingness to engage in official state discourse and policies that alienated some of the island's most disadvantaged communities. In an opinion piece for *El Nuevo Día*, Gretchen Coll Martí, then executive director of Puerto Rico Legal Services, described the lack of support for the bill as an indication that the Rosselló administration had "its priorities upside down."¹⁷⁶

D. The State of Punitive Spending: Expanding the Carceral Apparatus

On May 1, 1996, Pedro Pierluisi, Rosselló's attorney general, announced the administration had successfully lobbied to receive an additional 12 million dollars in federal funds to support the implementation of *Mano Dura*.¹⁷⁷ During the same press conference, Pierluisi also revealed government plans to build three new major correctional facilities with state funds, without the need of federal support.¹⁷⁸ Such announcements were part of the government's greater programmatic agenda that prioritized punitive over social spending. The following section examines developments surrounding prison growth under the Rosselló administration. While *Mano Dura* depressed public defense services, the crime-control initiative created new incentives for both public and private growth within the local correctional sector.

IV. SPHERES OF PUNITIVE INFLUENCE

[T]he body becomes a useful source only if it is both a productive and subjected body.

—Michel Foucault¹⁷⁹

A. The Politics of Prison Growth Under Mano Dura

Ingrid Fernández was in disbelief. An independent medical auditor for the Department of Correction's health program, Fernández retold *El Nuevo Día* what she witnessed in a protocol visit to Bayamón 308, a correctional facility in the island's metropolitan district. "In one of the areas we passed by, [more than thirty inmates] shared the same shaving razor," she commented, while emphasizing the potential dangers of such practice for the transmission of viruses like H.I.V.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* (translation by the author).

¹⁷⁷ Mulero, *Refuerzo federal*, *supra* note 120.

¹⁷⁸ *Id.*

¹⁷⁹ MICHEL FOUCAULT, *DISCIPLINE AND PUNISH* 26 (1977).

and hepatitis.¹⁸⁰ With her testimony, Fernández closed the second to last day of hearings at Puerto Rico's federal circuit on the overcrowding of local correctional facilities as part of the *Morales Feliciano* case. The ongoing *Morales Feliciano v. Gobernador*, a class action lawsuit by correctional inmates against the island's government unsettled since 1979, served as a forum for the discussion of inmate rights and living conditions inside Puerto Rican prisons.¹⁸¹

Throughout the 1990s and the entirety of Rosselló's administration, the state of correctional facilities was sharply criticized by outside observers like Fernández who pointed at persistent overcrowding and lack of hygiene. Ironically, continuous overcrowding occurred at a time of exponential growth for the island's correctional industry. Under Rosselló's entire governorship from 1993 to 2000, fourteen new correctional facilities were built, growing from 30 prior to his administration in 1991 to 44 in 1999.¹⁸² His administration also saw the creation of Puerto Rico's first 4 private prisons, an expression of the *laissez faire* economic model that juxtaposed his iron fist stance on social control. By the late 1990s, 3,000 inmates, or 20% of Puerto Rico's custodial population, were incarcerated inside private correctional facilities.¹⁸³ While the Legal Aid Society and Legal Services Corporation wrestled with insufficient resources, Puerto Rico's carceral state grew at unforeseen extents. This section outlines Puerto Rico's thriving carceral sphere under *Mano Dura* in three main ways. First, as a sequel to the previous section, I discuss the proliferation of prisons to complete my argument on the embrace of punitive spending over social spending that marked Rosselló's governorship. Although the federal government established caps for Puerto Rico's inmate population through the *Morales Feliciano* case, I examine the intertwined local and federal politics of zero-tolerance that enticed Rosselló to expand the island's correctional sphere even at the expense of facing fines. Second, by surveying expanding penal populations, this section contextualizes the growing market of indigent inmates that forced public defense organizations to push for increased resources. Finally, in depicting the country's expanding penal sphere and its continuous overcrowding, I set forth the second institutional arena in which *Mano Dura* policies compromised the civil rights of select Puerto Ricans.

¹⁸⁰ Juanita Colombani, *Confirman las fallas carcelarias*, EL NUEVO DÍA, July 22, 1998 (translation by the author), <http://www.adendi.com/archivo.asp?num=344061&year=1998&month=7&keyword=Confirman%20las%20Fallas%20Carcelarias>.

¹⁸¹ Liza Mónica Ayuso-Quiñones, *La guerra contra las drogas, guerra contra el pobre: Aspectos socioeconómicos de la política pública*, 75 REV. JUR. UPR 1411, 1426 n.60 (2006).

¹⁸² ROSSELLÓ, A MI MANERA, *supra* note 33, at 211.

¹⁸³ Carlos E. Ramos-González, *La Industria del dolor*, 36 REV. JUR. UIPR 323, 330 (2002).

B. State of Penal Populations

In Puerto Rico, 582 individuals are incarcerated per 100,000 inhabitants, a rate which sets the island apart as the Latin American country with largest custodial population and only behind the United States and Russia at a global scale.¹⁸⁴ Before Rosselló's arrival to office in January 1993, the country's penal population approximated 14,355.¹⁸⁵ This figure had increased to 20,136 in late 1993. By 1995, more than 24,471 of the island's residents were under custody of correctional facilities in some form or another.¹⁸⁶ The country's inmates composed a homogenous population at various levels. Most entered the correctional system due to drug related offenses and around 60% of them consumed illegal drugs.¹⁸⁷ Despite the high levels of drug usage and addiction, in the early 1990s, the country's Corrections Department could only provide rehabilitation treatment for 8 of every 100 drugs users, an insufficient provision of services regarded as the fuel behind recidivism and ever-growing penal populations.¹⁸⁸ Some have observed that while the criminal justice system "is willing to send [felons] to prison under long sentences and invest in them exorbitant monetary resources to alienate them from civic life," it does not invest in their reactive and proactive rehabilitation.¹⁸⁹

During Rosselló's inaugural term, the rise in penal populations was ignited by the policies set forth under the *Mano Dura* platform. As discussed in previous sections, Rosselló and his legislative allies passed a series of punitive laws, including amendments to the Penal Code, which increased penalties and sentences for varied offenses. Dora Nevares-Muñiz asserted that the amendments to the Penal Code approved between 1993 and 1995 have continued a tradition of tough sentencing and will likely impact the country's penal population, both with regards to increasing incarceration periods and constraining resources to fulfill the constitutional mandate to inmate rehabilitation.¹⁹⁰ Using as context this introduction of Puerto Rico's already exceptional carceral apparatus, in the following section, I trace the even more exceptional story of how, under Rosselló's administration, the correctional sector continued to grow despite the federal mandate to avoid increasing the number of inmates per the *Morales Feliciano* rulings.

184 Ayuso-Quiñones, *supra* note 181, at 1420.

185 NEVARES-MUÑIZ, *supra* note 12, at 199. This quantity did not include individuals in correctional vigilance under parole. *Id.*

186 *Id.*

187 *Id.* at 208.

188 Ayuso-Quiñones, *supra* note 181, at 1425.

189 *Id.* at 1431.

190 NEVARES-MUÑIZ, *supra* note 12, at 194.

C. Growth at all Costs

Since the start of Rosselló's administration, penal overcrowding and the ongoing *Morales Feliciano* case loomed into all discussions of correctional expansion and the collateral consequences of *Mano Dura*. A class action suit against the Puerto Rican state by correctional inmates, *Morales Feliciano* defined the arena of correctional development under Rosselló. According to Carlos Ramos, an attorney involved in the initial *Morales Feliciano* proceedings, litigating the case as a class action suit had two principal objectives: first, to force the local government and its corrections department to guarantee inmates' constitutional rights in order to mitigate the suffering caused by imprisonment; and second, to force state acknowledgement of the financial burden imposed by constructing new penal institutions hoping, thus, to promote the creation of alternatives to reclusion.¹⁹¹ In 1980, the U.S. District Court for the District of Puerto Rico first determined that overcrowding, exacerbated by the miniscule cells and common areas existing inside correctional facilities, violated inmate civil rights.¹⁹² This initial ruling paved the way for future litigation efforts to focus on the creation of more specific programs that would enhance inmate conditions, such as education and health initiatives.

In a 1993 ruling part of the *Morales Feliciano* litigation, the federal court mandated a reduction of the island's population behind bars to 10,382 by October 31st of that same year, at the expense of incurring in fines of 300 dollars for each additional inmate held in the system after such date.¹⁹³ The administration that preceded Rosselló's incurred more than 125 million dollars in fines for not complying with *Morales Feliciano*'s dictates. However, despite appearing committed to avoid additional fines, in late November 1994, the Rosselló administration faced a penalty of 1.5 million dollars for incarcerating 2,078 individuals in excess of the 10,382 person court-imposed limit.¹⁹⁴ According to Judge Pérez Giménez, the persistence of high incarceration levels albeit limits set by *Morales Feliciano* revealed "[t]he failure of defendants [—the government—] to act despite their knowledge of the serious harm and the substantial risk of serious harm to the plaintiff class [—inmates—] . . . [their] record in this case is replete with . . . see-sawing cyclical behavior."¹⁹⁵ Fines had increased to 31 million dollars by April 1995.¹⁹⁶

¹⁹¹ Ramos-González, *supra* note 183, at 326.

¹⁹² *Resumen caso Morales Feliciano*, LEX JURIS (Mar. 2004), <http://www.lexjuris.com/Servicios/Resumen%20del%20caso%20de%20Morales%20Feliciano.pdf>.

¹⁹³ Ingrid Ortega-Borges, *Nuevas multas a los penales*, EL NUEVO DÍA, Nov. 11, 1994, <http://www.adendi.com/archivo.asp?num=174586&year=1994&month=11&keyword=Nuevas%20multas%20a%20los%20penales>.

¹⁹⁴ *Id.*

¹⁹⁵ Carlos E. Ramos-González, *El caso Morales Feliciano y el ataque deliberado de causar sufrimiento*, 37 REV. JUR. UPR 247, 259 (2003). The *Morales Feliciano* case remained unsettled from 1979 until 2012, making it the longest federal lawsuit in United States history. For a detailed narrative of the

Why did the government allow the continued growth of inmate populations at the expense of incurring multi-million dollar fines? Under the *Mano Dura* platform, the Rosselló administration executed policies that deliberately incremented the number of correctional inmates. For instance, during the first years of Rosselló's administration, there was a notable decrease in the number of inmates released under parole. The year before Rosselló's arrival to office, 1966 felons were freed after receiving parole; in 1994, only 1622 shared that luck.¹⁹⁷ Nydia Cotto, president of Puerto Rico's parole board, insinuated that the lessened number of parolees was reflective of the state's hyper-punitive stance on crime control. Cotto told the press that previous board administrations had been *too lax* in granting parole permits and that, under the *Mano Dura* amendments, felons convicted for violent crimes were not eligible for parole.¹⁹⁸ She did recognize, nonetheless, that lower parole rates could worsen overcrowding across the island's correctional facilities.¹⁹⁹

Other correctional administrators also feared *Mano Dura* policies would inflate incarceration rates and further complicate the *Morales Feliciano* case. Before the administration's approval of increased sentences for crimes committed with firearms, Johnny Colón González, Administrator of the Corrections Department, warned that such amendments to the Penal Code would increase overcrowding across the island's prisons given that most serious criminal offenses were committed with firearms.²⁰⁰ Government officials like Colón also expected the island's custodial population to increase as a result of the intensive police occupations and patrolling conducted under *Mano Dura*.²⁰¹ To avoid an overcrowding crisis as more inmates were pipelined into the system, Colón's immediate recommendation was to incentivize the creation of new prisons.²⁰² However, for Himirce Hernández, the Department's Director of Community

case's origins, see *id.* For a description of the case's settlement in 2012, see Gerardo E. Alvarado León, *Gobierno cierra histórico caso Morales Feliciano*, EL NUEVO DÍA, Apr. 26, 2012, <http://www.elnuevodia.com/nota-1244322.html>.

196 Pepo García, *Sorprende al gobierno la multa por hacinamiento*, EL NUEVO DÍA, Apr. 22, 1995, <http://www.adendi.com/archivo.asp?num=193864&year=1995&month=4&keyword=sorprende%20al%20gobierno%20la%20multa%20por%20hacinamiento>.

197 Ortega-Borges, *supra* note 193; Andrea Martínez, *Mayor cedazo con los presos*, EL NUEVO DÍA, Jan. 21, 1995, <http://www.adendi.com/archivo.asp?num=182726&year=1995&month=1&keyword=mayor%20cedazo%20a%20los%20presos>.

198 *Id.* (translation by the author).

199 *Id.*

200 Ingrid Ortega-Borges, *Complican el hacinamiento penal*, EL NUEVO DÍA, Apr. 25, 1993, <http://www.adendi.com/archivo.asp?num=108193&year=1993&month=4&keyword=complican%20el%20hacinamiento%20penal>.

201 Néstor Figueroa-Lugo, *Mayor capacidad en las cárceles*, EL NUEVO DÍA, July 18, 1993, <http://www.adendi.com/archivo.asp?num=135787&year=1993&month=7&keyword=mayor%20capacidad%20para%20las%20c%20rceles>.

202 *Id.*

Development, increasing penal populations urgently demanded the guaranteed expansion of rehabilitation services, not necessarily more correctional facilities. She opposed increasing penalties and incarceration time for various offenses, as “[i]t has been proven that the more inmates interact with community life, the better their rehabilitation prospects.”²⁰³ Yet, as Rosselló completed his first year in office, the expansion of custodial capacity, and not of rehabilitation services, surfaced as the path of action assumed by correctional authorities.

Albeit supposed to fulfill the court’s mandate of stabilizing the custodial population at 10,382 inmates by the end of October 1993, the Rosselló administration pushed its penal apparatus into unforeseen growth.²⁰⁴ In mid-July, the Corrections Department announced that through renovations to current penal facilities, an additional 1,600 spaces would be available to accommodate new inmates, thus reducing overcrowding and mitigating the increased influx of convicts following the incorporation of longer sentences by new Penal Code provisions.²⁰⁵ These renovations represented an investment of 15 million dollars into five correctional facilities located across the island. The government’s initiative to evade another overcrowding crisis acquired unprecedented dimensions by the fall of 1993: in September, administration officials announced the construction of the island’s first private prisons.²⁰⁶ Nonetheless, these private correctional developments were not a mere reflection of the government’s initiative to avoid overcrowding. The increased demand for custodial spaces was in many ways created by the government itself through its *Mano Dura* policies. At the same time, the impetus for opening additional correctional facilities was grounded on a robust set of interconnected economic and political interests. In the following section, I begin to examine such interests by focusing on the economic incentives that enticed the government to privatize prison development.

D. Economic Incentives for Expansion: The Rise of a Criollo Prison-Industrial Complex

Explaining the rationale for transferring prison development to the private sector, Álvaro Cifuentes, Rosselló’s Chief of Staff, told *El Nuevo Día* that it was a measure aimed at energizing job opportunities in the free market, where the promise of competition generates “expectations for better salaries, benefits and work conditions.”²⁰⁷ While the design, construction and administration of these new prisons would be in private hands, Cifuentes still recognized the govern-

²⁰³ Ortega-Borges, *supra* note 200 (translation by the author).

²⁰⁴ See Figueroa-Lugo, *supra* note 201.

²⁰⁵ *Id.*

²⁰⁶ Andrea Martínez, *En manos privadas la construcción de penales*, EL NUEVO DÍA, Aug. 9, 1993, <http://www.adendi.com/archivo.asp?num=120699&year=1993&month=8&keyword=manos%20privadas>.

²⁰⁷ *Id.*

ment's pivotal role in protecting inmate rights. He claimed that, although the private-public alliance was consistent with their view of government as a facilitator, the responsibility of securing rights and guaranteeing best living conditions for inmates undoubtedly remains ours.²⁰⁸ Cifuentes also acknowledged the economic viability of privatization as an alternative that would cheapen the construction of correctional facilities for state government.²⁰⁹

Proposals for private prison development were closely based on Rosselló's vision of a new economic model for what he regarded as a failing Puerto Rican state. Shortly after assuming the governorship, Rosselló told journalists that the local government's infrastructure was not effective anymore given it "was too big, too old, [and] too rusty."²¹⁰ The administration's economic plan aspired to produce wealth and jobs, without relying on temporary formulas, by providing financial incentives for the long-term development and stability of private industries.²¹¹ Nonetheless, both Cifuentes's and Rosselló's articulations of the logic behind privatizing prison development reverberate with a series of economic incentives that students of criminal justice across national contexts have regarded as the basis for the prison-industrial complex phenomenon.

A proxy for understanding mass incarceration in the continental United States, the prison-industrial complex refers to a "set of bureaucratic, political, and economic interests that encourage increased spending on imprisonment, regardless of the actual need."²¹² More theoretically, the prison-industrial complex has also been described as a state of mind in which hyper-incarceration rates, in their majority for nonviolent offenders, translate into "jobs for depressed regions and windfalls for profiteers."²¹³ While correctional officers might see danger in overcrowding, the premise of a prison-industrial complex presents higher incarceration levels as an opportunity for politicians and business contractors alike.²¹⁴ With privatized development, the corrections industry then becomes a lucrative market for corporations, transforming crime control from a matter of social stability into a matrix for economic growth.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Inoperante el gobierno*, LA PRENSA DE SAN ANTONIO, June 3, 1993 (translation by the author).

²¹¹ *Id.*

²¹² Eric Schlosser, *The Prison-Industrial Complex*, THE ATLANTIC, Dec. 1, 1998, www.theatlantic.com/issues/98dec/prisons.htm. Some scholars of mass incarceration have lessened the importance of the prison-industrial complex in explaining the phenomenon; as I do in the following section of this section, they recognize that political incentives also played a role in generating carceral growth across the United States. See LOÏC WACQUANT, *PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY* (2009); RUTH W. GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS AND OPPOSITION IN GLOBALIZING CALIFORNIA* (2007) and MARIE GOTTSCHALK, *THE PRISON AND THE GALLOWS: THE POLITICS OF MASS INCARCERATION IN AMERICA* (2006).

²¹³ Schlosser, *supra* note 212.

²¹⁴ *Id.*

Examining the growth of Puerto Rico's penal sphere under *Mano Dura* via the lens of a prison-industrial complex has various implications. First, by expanding the state's custodial capacity through private venture, inmates were transformed, to an extent, into economic commodities, as corporations and other contractors profited from their incarceration. Moreover, the creation of a private penal sphere in which contractors assumed control of inmate management, from rehabilitation services to health care, can be regarded as reflective of the state's incapacity at both controlling its carceral population and preparing inmates to eventually reintegrate into community life.²¹⁵ Lastly, the renewed market identity of the carceral sphere represented a shift in the state's priorities for using its punitive powers. Under a prison-industrial complex, profiteering precedes effective inmate treatment and rehabilitation, even at the expense of inflating penal populations.

The implications of this prison-industrial complex echo the logic of *Mano Dura* itself. As Rosselló and his legislature enacted tougher sentences into the Penal Code, more individuals would undoubtedly face longer terms behind bars. At the same time, the government's discourse alienating criminals from the polity and characterizing them as enemies of law-abiding Puerto Ricans reinforced the legitimacy of a penal program in which punishment, not rehabilitation, was pivotal. Lastly, prison privatization further enhanced *Mano Dura*'s political capitalization of crime, as it freed the state from the financial burden of correctional growth, while still fostering public notions that crime was being combated without leniency. In short, privatization and its benefits only incentivized the Rosselló's administration aim of making a theater out of crime control. But this story of exceptional carceral growth is not only explained by financial motivations. The following section outlines the political forces that, from Washington D.C., interacted to legitimize the expansion of Puerto Rico's carceral state under *Mano Dura*.

E. Political Incentives for Carceral Expansion: The Federal War on Crime

After a meeting of Rosselló's Public Safety Council in late 1994, José Colón, Director of the Corrections Department, claimed the "correctional system [was] in crisis."²¹⁶ Colón criticized the government's crime control efforts lack of initiatives "bettering rehabilitation that would avoid having to incarcerate so many people."²¹⁷ He believed it was pointless to continue building prisons and incarcerating everyone, without granting inmates educational and other rehabilitation opportunities that counter recidivism.²¹⁸ As examples of such rehabilitation

²¹⁵ See generally PICÓ, *supra* note 16.

²¹⁶ Andrea Martínez, *Pide una academia para los oficiales de custodia*, EL NUEVO DÍA, Dec. 14, 1994 (translation by the author), <http://www.adendi.com/archivo.asp?num=178722&year=1994&month=12&keyword=pide%20ouna%20academia%20para%20los%20oficiales%20de%20custodia>.

²¹⁷ *Id.* (translation by the author).

²¹⁸ *Id.*

alternatives, Colón mentioned vocational opportunities like mechanical and computer training programs available at correctional facilities in the continental U.S.

Colón's comments occurred at the time when the local government considered developing additional correctional facilities following the federal Violent Crime Control and Law Enforcement Act of 1994.²¹⁹ Along with economic instigators, it is essential to understand how the growth of Puerto Rico's prison industry under *Mano Dura* interacted with political developments occurring at the federal level. As previously discussed, Rosselló's conceptual understanding of crime control was influenced by the punitive turn that shaped United States consensus towards crime control since the 1970s.²²⁰ Moreover, federal anti-crime initiatives, especially those assigning funds for criminal justice operations at the local and state levels, inevitably affected policies crafted by the Rosselló administration to combat crime. Signed into law by President Clinton in September 1994, the *Violent Crime Control and Law Enforcement Act* became the largest crime bill in United States history.²²¹ After much partisan warfare, President Clinton celebrated the bill's approval and claimed that "never again should . . . partisanship take precedence over law and order."²²² Given Clinton's commitment to passing the bill, political commentators at the time observed rising bipartisan consensus regarding the administration of tough on crime policies, an issue traditionally dominated by Republicans.²²³

At the national level, the bill allowed for 100 thousand new police officers, 9.7 billion dollars for prisons and 6.1 billion dollars for prevention programs.²²⁴ The bill assigned all United States jurisdictions with 7.9 million dollars for prison construction.²²⁵ However, in order to be granted these funds, local governments had to maintain behind bars all offenders charged with violent crimes until completing 85% of their sentences.²²⁶ Ironically, in Puerto Rico, even with the enactment of tougher sentences under the *Mano Dura* platform, the local parole

219 Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. §§ 13701-14223 (2012).

220 As previously discussed, beginning in the late 1960s, hyper-punitive policies characterized distinguish crime management efforts in the United States. For an overview of this punitive turn at the national level, see MAUER, *supra* note 23, and GOTTSCHALK, *supra* note 212.

221 42 U.S.C. §§ 13701-14223.

222 Ann Devroy, *Firmada la ley con bombos y platillos*, EL NUEVO DÍA, Sept. 14, 1994 (translation by the author), <http://www.adendi.com/archivo.asp?num=167897&year=1994&month=9&keyword=firmada%20la%20ley%20con%20bombos%20y%20platillos>.

223 *Id.*

224 U.S. DEP'T OF JUSTICE, VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994 FACT SHEET (1994), <https://www.ncjrs.gov/txtfiles/bills.txt>.

225 *Id.*

226 Leonor Mulero, *Se fugan los fondos para penales*, EL NUEVO DÍA, Feb. 3, 1995, <http://www.adendi.com/archivo.asp?num=184254&year=1995&month=3&keyword=fondos%20para%20penales>.

board was empowered to release violent offenders after only completing 50% of their sentences.²²⁷

In early 1995, the Rosselló administration remained uncertain whether or not they would accept federal funds for the development of additional prisons. Pedro Pierluisi, Rosselló's Attorney General, told the press that receiving federal funds was entirely optional and that the local government was already expanding its custodial capacity through the construction of four private prisons.²²⁸ As discussed earlier in the section, by 1996, the Rosselló administration announced that new prison construction was being funded through a joint venture between private industry and local government —without any federal support.²²⁹

Rosselló's government, nonetheless, used funds assigned by the federal bill to enhance the local police department. Clinton's anti-crime legislation provided the island with \$140 million to hire new police officers, while only \$16 million to be distributed across different municipalities for the creation of rehabilitation and employment opportunities for drug offenders.²³⁰ Such a wide divergence in the assignment of funds highlights the prioritization of punitive over social spending that also distinguished crime control politics at the federal level. Ultimately, the Puerto Rican police force grew from 12 thousand officers in 1992 to 21 thousand in 2000.²³¹ During the same period, more than \$107 million were fed into the Commonwealth Police Department for the acquisition of new equipment and technologies, including state of the art patrols, speedboats, helicopters and video cameras.²³²

While *Mano Dura* was in several aspects a unique Puerto Rican phenomenon, its policies did not exist in isolation. The anti-crime legislation and programs enacted by Rosselló were in flux with the hyper-punitive approach that guided criminal justice development across the continental United States. The growth of Puerto Rico's criminal justice apparatus during *Mano Dura* also reflected the prioritization of punitive spending over social spending that had guided federal anti-crime legislation for decades. These multi-dimensional interactions between *Mano Dura* and federal politics highlight the complexity of a policy based on ideas and priorities with transnational implications. However, as a manifestation of state power, *Mano Dura* ultimately served local political purposes. The following section examines Rosselló's rejection of plans for penal reform proposed by members of his own party. Rosselló's disregard of alternatives crafted by political allies denotes his unwavering defense of *Mano Dura* and the

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Mulero, *Refuerzo federal*, *supra* note 120.

²³⁰ Leonor Mulero, *Fondos para atajar al crimen*, EL NUEVO DÍA, Sept. 13, 1994, <http://www.adendi.com/archivo.asp?num=167989&year=1994&month=9&keyword=fondos%20para%20atajar%20el%20crimen>.

²³¹ ROSSELLÓ, *A MI MANERA*, *supra* note 33, at 208-09.

²³² *Id.* at 209.

growing carceral sphere as an arena through which, at the expense of violating the *Morales Feliciano* rulings, he legitimized his state project.

F. Reform Neglected: Defending Mano Dura and Perpetuating Carceral Growth

Alarmed by the increasing influx of individuals into the correctional system, Oreste Ramos, a state representative affiliated with Rosselló's New Progressive Party, proposed, in the summer of 1995, the abolishment of the 1993 *Mano Dura* amendments to the Penal Code.²³³ To reduce carceral populations and fulfill the parameters established in *Morales Feliciano*, Ramos suggested reducing penalties for minor offenses and only incarcerating those charged with grave crimes, such as murder, rape and aggravated theft.²³⁴ Instead of putting them behind bars, Ramos believed non-violent felons should be sentenced to extensive community service and other works of civil engagement.²³⁵ Ramos told the press that "[s]imply put, we cannot continue incarcerating people whose offenses are not that grave and who do not represent any real danger to society."²³⁶ He considered it was fiscally irresponsible to sustain such a massive criminal justice apparatus and believed hyper-spending could be resolved by abolishing the "traditional system of penalties and bail."²³⁷ Harry Anduze, president of the local bar association, enthusiastically supported Ramos's proposal:

[Puerto Rico holds a] custodial system that the country's economic structure cannot sustain. It is an inhumane system that lacks the educational and employment opportunities that would prepare inmates to reincorporate effectively into community life upon their release.²³⁸

However, Ramos's own party opposed his proposal. Rosselló himself spoke against the suggested reform, saying that his administration was focused on addressing overcrowding by reinforcing the correctional system's custodial capacity, not by lessening penalties.²³⁹ Rosselló's opposition to reform and defense of additional prison construction articulates the logic around which he legitimized *Mano Dura*'s institutional repercussions. Regardless of fines for high custodial populations, pursuing *Mano Dura* remained the electorally savvy tactic. Just as

²³³ Oreste-Ramos, *Reforma penal*, EL NUEVO DÍA, July 4, 1995, at 37.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.* (translation by the author).

²³⁷ *Id.* (translation by the author).

²³⁸ Carmen Enid Acevedo, *Receptiva la toga a la propuesta del Código*, EL NUEVO DÍA, Nov. 8, 1995 (translated by the author), <http://www.adendi.com/archivo.asp?num=208333&year=1995&month=11&keyword=receptiva%20la%20toga%20a%20la%20propuesta%20del%20c%C3%B3digo>.

²³⁹ Andrea Martínez, *Objeciones del gobernador*, EL NUEVO DÍA, Nov. 8, 1995, <http://www.adendi.com/archivo.asp?num=208314&year=1995&month=11&keyword=objeciones%20del%20gobernador>.

depriving public defense organizations of increased financial resources, building more prisons and incarcerating more individuals institutionalized *Mano Dura's* discourse of the criminal as unworthy and innately wicked. Despite its ineffective treatment of crime, the theater and promise of *Mano Dura* satisfied a polity that craved for a renewed sense of public safety.

CONCLUSION: THE CHILDREN OF MANO DURA

On board a 1984 Honda, a seventeen year-old became the year's 184th fatality.²⁴⁰ The teenager was shot five times at 8:00 AM right outside his high school in Gurabo, thirty miles south of San Juan. His death was the fourth in less than twenty-four hours on March 9, 1994, a year into the initial implementation of *Mano Dura*.²⁴¹

During the subsequent two decades, murders of this kind became a norm in Puerto Rico. In 2011, the year with the highest number of homicides to date, there were twenty-six homicides for every 100,000 Puerto Ricans.²⁴² In Mexico, the same rate was eighteen for every 100,000.²⁴³ Compared to other United States jurisdictions, Puerto Rico tops homicide rankings.²⁴⁴ While in the continental United States police forces make arrests in 66% of murder cases, in Puerto Rico, case resolution only occurs for 43% of homicides.²⁴⁵ According to local authorities, 70% of all killings are drug related.²⁴⁶

Far from just being a series of zero-tolerance policies, *Mano Dura* is a mental construct for thinking about crime that has persisted in Puerto Rico, and to a greater extent, the United States, over the past few decades. A quick search of the term *Mano Dura* in electronic databases of Puerto Rican newspapers reveals that, since the 1990s, the term has been used in a multiplicity of other law enforcement contexts, such as *Mano Dura against child pornography* and *Mano Dura against drunk driving*. The *Mano Dura* mentality rejects state responsibility for combating the root causes of crime and holds criminals accountable as rational actors who just need harsher punishment to be deterred from committing felonies. The current peak in murders demonstrates its inadequacy as a tool for crime reduction. As stated by Nevares-Muñiz, the violent discourse in which the

²⁴⁰ *Aumenta el respaldo a Acevedo: A su vez, disminuye el apoyo a la obra del gobernador*, LA PRENSA, Mar. 10, 1994.

²⁴¹ *Id.*

²⁴² *Drug Trafficking: Puerto Rico's Gov't Asks US to React*, VOXXI, Jan. 11, 2012, <http://www.voxxi.com/drug-trafficking-puerto-rican-govt-asks-us-to-react-americas/>.

²⁴³ *Id.*

²⁴⁴ Danica Coto, *Puerto Rico: Homicide Record Likely to be Surpassed this Year, Police Say*, THE ASSOCIATED PRESS, Nov. 16, 2011, http://www.huffingtonpost.com/2011/11/16/puerto-rico-homicide-record_n_1097261.html.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

Roselló administration framed *Mano Dura* as a war against criminals has, “like all wars, it has only caused death and violence, citizens anxious for their safety, and segregated communities; the discourse is empty and lacks thoughtfulness.”²⁴⁷ Irrespective of its impact on street crime, *Mano Dura* engrained violence in the state institutions that dealt with offenders and, most importantly, within the collective imagination of Puerto Ricans.

A. *Crime and Punishment in Today's Puerto Rico*

In response to record-breaking violence in 2011, Pedro Toledo, chief of Puerto Rico's police during the birth of *Mano Dura*, attributed rising crime to a “generation of young people who are violent, who take a gun and shoot, killing indiscriminately because they are expendable.”²⁴⁸ Today's young gunmen, a majority who are in their twenties, were the children who grew up in public housing complexes occupied by the National Guard during the 1990s and who witnessed violence at home as armed officers attempted to restore order in their vicinities.²⁴⁹ More succinctly, today's *gatilleros*, or gunmen, were socialized in violence-infused environments. Dora Nevares calls this generation of Puerto Ricans the children of *la Mano Dura contra el Crimen*.²⁵⁰ The impact of *Mano Dura*, however, transcends the gates of its occupied public housing complexes. Contemporary Puerto Rican society, across cleavages in location and socio-economic status, has been shaped in various ways by the *Mano Dura* itself. For the past twenty years, repercussions of the early 1990s anti-crime strategy have extended from shifting the geography of crime to transforming police culture and essentially causing Puerto Ricans to reimagine themselves and their perception of others.

With the arrival of National Guard and police officers to public housing complexes mostly located near the island's urban centers, drug dealers moved their selling points to unoccupied communities in non-metropolitan towns. This ignited a renewed thug war that sustained criminal activity and extended violence into rural regions. By early 1995, residents of the countryside already perceived rising violence in their neighborhoods as a collateral consequence of *Mano Dura*. After the murder of three teenage neighbors, Brenda Rodríguez, a local of Vega Baja —a small town located in the island's northern coast— said that although such crime scenes used to only occur in urban public housing complexes “now they are a reality seen in the island's interior.”²⁵¹ Brian Dunkel,

²⁴⁷ NEVARES-MUÑIZ, *supra* note 12, at 212 (translation by the autor).

²⁴⁸ Coto, *supra* note 244.

²⁴⁹ Eliván Martínez, *Hijos de la Mano Dura contra el crimen*, EL NUEVO DÍA, Sept. 30, 2008, <http://www.adendi.com/archivo.asp?num=74035&year=2008&month=9&keyword=hijos%20de%20la%20mano%20dura>.

²⁵⁰ *Id.*

²⁵¹ Karl Ross, *Ola criminal se desata en Puerto Rico*, EL NUEVO HERALD, Feb. 6, 1995, at 1A (translation by the author).

another *vegabajeño* who moved from San Juan to escape rising urban violence, considered *Mano Dura* the cause of increasing crime across the island and hoped the “government knew what it was doing.”²⁵²

It is also crucial to consider the extent to which the logic of *Mano Dura* incentivized the rise of a culture of violence and brutality within Puerto Rico’s Police Department (P.R.P.D.) that has persisted into the 2010s. On a report released in September 2011, the United States Department of Justice concluded that:

[It is] reasonable . . . to believe that PRPD officers engage in a pattern and practice of: (1) excessive force in violation of the Fourth Amendment; (2) unreasonable force and other misconduct designed to suppress the exercise of protected First Amendment rights; and (3) unlawful searches and seizures in violation of the Fourth Amendment.²⁵³

The report states that increased criminal incidence does not justify the department’s “continued civil rights violation [n]or [its] failure to implement meaningful reforms.”²⁵⁴ More specifically, the report claims the department abuses its force by persistently deploying “heavily armed tactical units” on preventive patrols to *caseríos* and other poverty-stricken neighborhoods.²⁵⁵ An officer assigned to a community policing unit cited in the report claimed that he needed to enter neighborhoods with high-caliber weapons and “violate civil rights to fight crime and meet goals set by government officials.”²⁵⁶

According to the Justice Department, the persistence of these tactics among police officers triggered the development of *violent subcultures* among the P.R.P.D.’s tactical units, which commonly use “excessive force when interacting with civilians,” especially those of the lower-classes, a well-known, yet neglected reality by members of the police department’s upper management.²⁵⁷ A 2000 report of the Puerto Rico Bar Association’s Commission on Human and Constitutional Rights supports recent Justice Department findings, as it concluded that “the identification of ‘high-crime zones’ and ‘dangerous individuals’ [that occurred under *Mano Dura*] resulted in ‘a class-based interpretation and application of criminal law, worsening the class divisions in Puerto Rico.’”²⁵⁸

²⁵² *Id.*

²⁵³ *Investigation of the Puerto Rico Police Department*, U.S. DEP’T OF JUSTICE CIVIL RIGHTS DIV. 2 (Sept. 5, 2011), http://www.justice.gov/crt/about/spl/documents/prpd_exec_summ.pdf (last visited Dec. 19, 2014).

²⁵⁴ *Id.*

²⁵⁵ *Id.* at 3.

²⁵⁶ *Id.* at 4.

²⁵⁷ *Id.* at 6.

²⁵⁸ Jorge Rodríguez-Beruff & Gerardo Cordero, *The Caribbean: The “Third Border” and the War on Drugs*, in *DRUGS AND DEMOCRACY IN LATIN AMERICA: THE IMPACT OF U.S. POLICY* 303, 325 (Coletta A. Youngers & Eileen Rosin eds., 2005).

Moreover, access to justice for Puerto Rican indigents is still precarious and remains a contested matter within the legal community. In 2011, Federico Hernández Denton, then Puerto Rico's Supreme Court Chief Judge, recognized that legal aid models subsidized by the government, such as the Legal Aid Society and the Legal Services Corporation, are still insufficient guarantees of adequate legal defense and access to a just trial for low-income citizens.²⁵⁹ In an effort to alleviate current inequalities, Hernández Denton included the creation of an access to justice task force in the judiciary branch's strategic plan for 2011-2015.²⁶⁰

Despite the rise of initiatives to improve indigent access to justice, those most involved with Puerto Rico's public defense sector remain pessimistic. For Federico Rentas, Executive Director of the Legal Aid Society, which remains the principal organization providing counsel to criminal indigents, "justice is a dog that only bites on the poor."²⁶¹ Rentas's sentiments are echoed by advocates of public defense in the continental United States. On the occasion of *Gideon v. Wainwright's* 50th anniversary, a conjunct report by Yale Law professor Stephen Bright and the Southern Center for Human Rights said that it is still "better to be rich and guilty than poor and innocent."²⁶²

The persistent disregard of legal aid models is, in many ways, sustained by zero-tolerance philosophies behind initiatives like *Mano Dura*, which construct criminals as inherently corrupted individuals who are unredeemable by societal nourishment. Governments that engage in such crime control politics embrace budget models that prioritize punitive spending, yet lessen the value of funding social interest programs, allowing for a weakened public defense sector that co-exists with a thriving correctional apparatus. This vision of governance and crime management blurs the inherent value of guaranteeing indigent legal defense: the protection and exercise of important human rights for society's most vulnerable sectors.²⁶³ Guaranteeing access to justice for a low-income individual has been recognized as a way of fostering that person's inner peace.²⁶⁴ However, the persistence of a zero-tolerance rhetoric that dehumanizes felons and cele-

²⁵⁹ Brunymarie Velázquez, *Preocupa el acceso desigual a la justicia*, EL NUEVO DÍA, Aug. 11, 2011, <http://www.adendi.com/archivo.asp?num=67268&year=2011&month=8&keyword=preocupa%20el%20acceso%20desigual%20a%20la%20justicia>.

²⁶⁰ *Id.*

²⁶¹ Brunymarie Velázquez, *La justicia es para todos (los que puedan pagarla)*, EL NUEVO DÍA, July 24, 2011 (translation by the author), <http://www.adendi.com/archivo.asp?num=62630&year=2011&month=7&keyword=la%20justicia%20es%20para%20todos>.

²⁶² Andrew Cohen, *The Lies We Tell Each Other About the Right to Counsel*, BRENNAN CENTER FOR JUSTICE, Mar. 18, 2013, <http://www.brennancenter.org/analysis/lies-we-tell-each-other-about-right-counsel>.

²⁶³ See Rhudy, *supra* note 31.

²⁶⁴ See Leonel Barreto Barreto, *Análisis de contenido sobre los factores que inciden en la prestación de los servicios que ofrece a la ciudadanía la Sociedad para Asistencia Legal de Puerto Rico (1993 al 2007)* (Sept. 14, 2009) (unpublished M.P.A. thesis, University of Puerto Rico School of Public Administration) (on file with the School of Public Administration Library, University of Puerto Rico).

brates punishment keeps the act of investing in public defense models under disguise as politically and morally dubious.

While legal aid organizations continue to wrestle with limited funds, the island's correctional facilities remain ineffective venues of rehabilitation for their inmates. Two out of every three incarcerated Puerto Ricans become recidivists following their release.²⁶⁵ Reflecting on the current state of Puerto Rico's correctional facilities, Fernando Picó says, "today's prison is not a deterrent, it does not rehabilitate, and the punishment it administers is cruel and inhumane. Far from mitigating social problems, it has complicated them."²⁶⁶ As of February 2013, the island's population behind bars remained at 14,268 individuals.²⁶⁷

Exceptional incarceration levels and tough on crime politics, however, have also found recent berth across Latin America. During the first decade of the twenty-first century, several Central American countries enacted iterations of the *Mano Dura*. In a language reverberating with that used by Pedro Rosselló in the 1990s, Francisco Flores, Ex-President of El Salvador, justified his implementation of more repressive, paramilitary policing since criminals "have descended into dangerous levels of moral degradation and barbarism."²⁶⁸ Moreover, in seven years, Costa Rica saw a 155% upsurge in its incarcerated population, while Nicaragua and Honduras saw increases of 113% and 90%, respectively.²⁶⁹

Almost twenty years after the birth of *Mano Dura* a majority of Puerto Ricans still identify crime as their main social concern. According to a 2011 survey by *El Nuevo Día*, 83% of respondents limit the time they spend outdoors to avoid becoming fatalities of the streets' bloodshed, while 15% have acquired firearms.²⁷⁰ Decades after *Mano Dura's* inception fear reconfigures the lifestyle of Puerto Rico's inhabitants. They have learned not only to fear public spaces but to fear each other, especially those who are strangers. The persistence of indiscriminate violence has made Puerto Ricans fearful of social coexistence itself. In today's Puerto Rico, life unveils under the custody of violence.

Regardless of its (in)effectiveness as a public policy, *la Mano Dura contra el Crimen*, at its heart, served to imbed violence within Puerto Rico's criminal justice and legal institutions: political discourse not only vilified criminals as enemies of law-abiding citizens, it dehumanized them with such labels as *scum*.²⁷¹ The rhetoric legitimized defunding legal aid organizations and pouring torrents

²⁶⁵ NEVARES-MUÑIZ, *supra* note 12, at 209.

²⁶⁶ *Id.* at 209-10 (translation by the autor) (citing PICÓ, *supra* note 17, at 192).

²⁶⁷ DEPARTAMENTO DE CORRECCIÓN Y REHABILITACIÓN, POBLACIÓN CORRECCIONAL (Feb. 2013) (daily report on correctional population made by the Institute of Statistics of PR), *available at* http://cce.estadisticas.gobierno.pr/Documentos/D3463B67-E2BB-42A4-Bo2F-A128DFD35FA8/DCR_201302_PoblacionCorreccional.xls.

²⁶⁸ Mo Hume, *Mano Dura: El Salvador Responds to Gangs*, 17 DEV. IN PRAC. 739, 745 (2007).

²⁶⁹ Ramos, *supra* note 183, at 332.

²⁷⁰ Coto, *supra* note 244.

²⁷¹ Editorial, *supra* note 32.

of offenders into the correctional apparatus. These developments in turn *necessitated* prioritizing government investment in increased punitive capacities at the expense of social-interest policies.

More than eighteen years after the 1994 murder of the teenager on board a 1984 Honda, another seventeen-year-old met a similar fate. On a Sunday evening in June 2012, Stefano Steenbakkers, a close friend of my teenage niece, drove to San Juan from his grandmother's house in the coastal town of Dorado.²⁷² As he entered the expressway that connects the island from east to west, two criminals, in an attempted carjacking, shot him in the head several times. The thieves fled the crime scene without taking any of his possessions. The following morning, newspaper headlines chronicled another death.

²⁷² For an account of events that followed Stefano's death, see Zuania Ramos, *Stefano Steenbakkers Betancourt Case: Mother Transforms Puerto Rico's Violence Into Hope Through Organ Donation*, THE HUFFINGTON POST, Jan. 13, 2013, http://www.huffingtonpost.com/2013/01/13/stefano-steenbakkers-betancourt-organ-donation_n_2465174.html.