THE CRIMINAL LAW AND DRUG ABUSE IN PUERTO RICO - AN ESSAY ON THE POWER AND LIMITATIONS OF LAW

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SYNOPSIS

Law can be very powerful, effective medicine, if used in the right doses for the right ills. I do not think, however, that we should on the whole be very proud, if at all, of the way we have handled this potent remedy. Just as there is the problem of alcohol and drug abuse, society has had to cope with the severe handicap of law abuse. Misconceptions about the nature and end of law, its limitations, and relationships with the social and medical sciences, have led to serious misunderstandings about what the law can and should do in these troubled fields. Let us review, as an example, the Puerto Rican experience in the drug field.

The federal legislative experience has generally influenced our approach to this problem. There was no Spanish legislation in this field up to 1898 applicable to Puerto Rico. The first general attempt at control did not happen until Spain became a signatory of the January 23, 1912 The Hague convention on opium, morphine, cocaine, and their respective salts. Drug abuse was not the cause of serious social concern in Puerto Rico until well into the 20th century. That was also the case in the United States. The first federal food and drug act, 34 Statute 768, was not enacted until June 30, 1906. It simply required disclosure of the ingredients in food and medical products.

In 1912 the United States became one of the 13 parties to The Hague convention, mentioned before, which bound each High Contracting Party to restrain its nationals from trafficking in certain drugs. The first federal drug control legislation was enacted in discharge of this international obligation. I am referring, of course, to the Harrison Narcotics Act of 1914, 38 Statute 785, which required manufacturers and distributors of opiates and coca products to register with the U.S. Treasury Department and to keep records of transactions in these substances.

The rather modest features of the Harrison Act, which applied to Puerto Rico, were blown out of proportion in the hysterical climate created by the all-out drive to stamp out

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alcohol consumption. The National Prohibition Act of 1917, made possible by the 18th Amendment, was enforced by the Treasury Department together with the Harrison Act. The fanatical zeal of the representatives of the Treasury Department (the "T-men") produced 2 wars, one against liquor and the other against drugs. The results were equally disastrous.

The constitutionality of the Harrison Act was attacked, but the Supreme Court of the United States, in a 5 to 4 decision, upheld it (Doremus v. United States, 249 U.S. 86 [1919]. Later rulings interpreted the law as permitting doctors to administer drugs to patients only for conditions other than mere symptoms of addiction (Webb v. United States, 249 U.S. 96 [1919]; United States v. Behrman, 258 U.S. 280 [1922]. The illegal traffic flourished.

After the creation in 1930 of a separate Bureau of Narcotics, a drive was launched to have the states adopt repressive laws of their own. The National Conference of Commissioners on United States Laws produced in 1932 a Uniform Narcotic Drug Act. By Act No. 61 of May 13, 1934, Puerto Rico dutifully fell into line. The Uniform Narcotic Drug Act was adopted. It carried very light penalties. The first offense was punishable with a fine not greater than $50.00 or jail not exceeding 1 month, or both. Recidivism meant an increase in the fine up to $500.00 maximum and a maximum of 6 months incarceration.

From the 1930's on, a torrent of laws, increasingly repressive, were enacted in Puerto Rico. A common thread runs through them. All followed closely the federal pattern or a state initiative. None was preceded by scientific studies of the Puerto Rican situation. All blithely assumed that conditions here were basically similar to those of a fully developed, industrialized society such as the United States.

Since the late 1920's, action was started against a supposed marijuana epidemic. Several states acted and in Act No. 12 of April 19, 1932, Puerto Rico penalized the cultivation, importation, sale, or purchase of marijuana with a minimum of 1 month and a maximum of 1 year in jail.

On June 25, 1938, a new federal food, drug and cosmetic act was approved, 52 Statute 1040. One year later, Puerto Rico faithfully enacted a similar law, Act No. 149 of May 12, 1939. The penalties imposed by the Puerto Rican version of this legislation were relatively minor, however, in comparison with its federal counterpart. Act No. 149 of May 9, 1941, known as the Dangerous Drugs Act, followed shortly. It was to be repealed by the much tougher Barbiturics and Other Dangerous Drugs Act, Act No. 126 of July 13, 1960.
A new narcotics act, Act No. 48 of June 18, 1959, which took the federal Narcotic Control Act of 1956, 70 Statute 567, and the revised Uniform Narcotic Act, as its models, was part of the enforcement effort of the 1950's. The Narcotic Act of Puerto Rico repealed Act No. 12 of April 19, 1932 and Act No. 61 of May 13, 1934, referred to above.

The federal Comprehensive Drug Abuse Prevention and Control Act of 1970, 84 Statute 1236, consolidated existing measures. One year later Puerto Rico followed suit. Title II of the federal law together with the Uniform Controlled Substances Act are the basis of our present Controlled Substances Act, Act No. 4 of June 23, 1971. Our law repealed the Narcotics Act, but left in effect the Barbiturics and other Dangerous Drugs Act of 1960 and the Food, Drug and Cosmetic Act of 1939.

As was to be expected, our 1971 law substantially increased existing penalties. Our law is more repressive than the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

Although you shall hear from others a detailed analysis of addiction patterns in Puerto Rico, let me offer a brief look at what was happening in the real world at the same time that we were experiencing the legislative frenzy that I have just described.

Puerto Rico was basically a rural, underdeveloped community in 1898 when Spain was asked to relinquish its sovereignty over the island and Puerto Rico became a United States possession. Its population was less than 1,000,000, compared to the present 3,000,000 plus. There were no large cities. San Juan, the largest, had only 32,048 inhabitants. The literacy rate was 16.8%. An adult laborer in the sugar industry earned a daily wage which fluctuated from 20 to 30 cents. Women and children earned much less.

Several decades later, during the 1930's, the economic condition of Puerto Rico was still terrifying, if not worse in certain aspects. Unemployment in 1899 was 17%; in 1926, prior to the Great Depression, it was 30.2%. Net per capita income in 1930 was $122 a year; in 1940 it was $1 less. The rural population was diminishing. In 1899 it amounted to 85.4%; by 1940 the rural population was 69.7%. People were starting to flock into the cities where they lived in deplorable conditions.

Several major social movements gained speed from the 1940' on: the change from a rural to an urban society; consumerism; the erosion of existing patterns of authority; the crime explosion; the industrialization effort, with its
ups and downs; the mass emigration of Puerto Ricans to the United States, in search of a better standard of living; the degree of dependence of the Puerto Rican economy on federal charity, a phenomenon still to be studied adequately as to its impact on the Puerto Rican ethos; the rise of a middle class, largely conservative, which has not been able meaningfully to narrow the ominous gap between the rich and the poor; and the consequent development and alienation of diverse sub-cultures. On this fertile soil crime and addiction have flourished. From 1940 to 1980 the criminality rate increased 10.8 times. The population increment for the same period amounted only to 1.8. Crimes involving personal violence increased 139.8% from 1960 to 1980. All Type I crimes in 1940 amounted to 4,752. By 1960 the number was 33,272 and 20 years later, 92,510.

Very few crimes reach the courts in Puerto Rico. Only about 52% give rise to a complaint. Only about 10% of the Type I crimes result in an arrest. The conviction rate is, as we shall see, also very low.

Drug addiction, on the other hand, did not start to increase alarmingly until the 1960's. The estimate for 1961 was 1,600 cases. By 1964, the number jumped to 10,000 cases. In 1971, the estimates about the number of addicts in Puerto Rico vary from 16,000 to 20,000. Ten years later there was a quantum jump to some 83,000 addicts. The median age of the Puerto Rican addict is 24.7 years. The median age for drug initiation is 15.4 years. The median education achieved by the addict is 8.9 grades. Seven out of 10 addicts live in metropolitan areas. Three out of 4 addicts are involved in criminal activity, mainly related to property crimes.

In 1972-73, the cases filed for alleged violations of the Controlled Substances Act numbered 3,493. Convictions amounted only to 674, which represented 19% of the total. Ten years later, in 1982-83, in spite of the fact that the number of addicts has more than quadrupled, there were only 2,957 filings, 15% less than in 1972-73. Convictions amounted to 585, which represent 20% of the cases filed. These figures are particularly alarming when we review the information about Type I crimes in general. It has been estimated that criminal activity in Puerto Rico has a 96.2% probability of going unpunished. There is something radically wrong with the criminal justice system and with many other things in Puerto Rico.

Let us draw a few conclusions about what we have stated so far.
1. There is far too much reliance on law to face the drug addiction problem in Puerto Rico.

2. Too many myths and fictions have been allowed to develop about the use and function of the law.

3. We have blithely considered that problems as serious as drug addiction and crime itself can effectively be tackled simply by taking more and more repressive measures. This, in itself, is a form of addiction as dangerous as the other forms we are trying to cure or control. The literature about crime tends rather to view the certainty and promptness of punishment as more important than its severity.

4. We have generally followed a "me-too" approach to legislation in the field. Whatever the Congress of the United States does, we do; whatever the Commissioners on Uniform State Laws suggest, we accept. This is not to criticize United States approaches to the subject — the matter is outside the scope of this paper — but to point out the danger of a policy of blind acceptance of laws designed for a highly industrialized, affluent society quite different from ours.

5. As a result of the above we failed, as a rule, to undertake the necessary studies prior to legislation. It was not until the establishment in 1973 of the Puerto Rico Department of Addiction Services, 3 LPRA Section 401 a et seq., that the systematic preparation of scientific papers in this field has been undertaken and encouraged.

6. We have failed consequently to realize that law should play a role in this field that should be subservient to that of the medical and social sciences. In fields as emotionally charged as this, law can easily fall prey to the mood of the moment and popular panaceas unless firmly reined in by sober, well-grounded, scientific study. Law tends to reflect the values of the ruling class, which itself often subordinates rationality to moral indignation and institutional violence against those who threaten its way of life. Determinate sentencing, the death penalty, permanent exclusion of society, denial of bail, and other repressive measures should only be resorted to, if at all — Puerto Rico's Constitution does not permit, as it stands, some of these methods — after intensive, objective research.

7. The obsession with the legal approach to the drug addiction problem has caused neglect of the frightening social conditions that have created the climate in which the drug sub-culture has flourished. The drug problem will stay
with us and will become bigger and nastier unless we deal successfully with blights such as our towering unemployment rate, the dependence of our economy on federal charity, the blatantly unequal distribution of wealth, and the alienation of large segments of our society. Just legal truculence will not do the job.

8. This is not to say that adequate laws, properly enforced, do not necessarily play an important role in our quest for a better society, reasonably free of the personal and social tragedy of drug abuse. This requires a marked improvement of our criminal justice system. We are simply not doing well enough what is required of us. Why do so many crimes go undetected? Why should there be so few arrests? Why do such few cases ever reach the courts? Why should the convictions be so few? Where are the weak links? In the police? In the district attorneys? In the judges? In the juries? In the legal system as such? In a lack of community cooperation? These questions must be squarely met. The necessary resources must be committed to get the answers. As I have repeatedly stated in the past, if the pursuit of crime is to receive the attention it deserves, budgetary adjustments must be made to grant a higher budget priority to the criminal justice system.

9. It should be frankly admitted that public faith in the criminal justice system, as happens with many other institutions, has for decades been subject to processes of deep erosion. This trend must be reversed. As respects the courts, criminal cases are being handled more expeditiously and fewer cases are pending; moreover, there are other promising signs.

10. The present situation, however, is far from satisfactory. The conditions for judicial independence are not optimal. The selection and tenure of judges answer to a questionable philosophy. Salaries are too low. The desertion rate is alarming.

To sum up, law plays rather a small part in the struggle against drug abuse. There is a grave misunderstanding in Puerto Rico about what the law can and should do. We should tone down our expectations, at the same time that we should enable the law really to do its work, even should it be at a more modest level. Law is only one of several means of social control and improvement.

Above all, we must not forget the primary aim of the responsible citizen: the building of a just society. The closer we get to that dream, the farther we get from the nightmares of alienation, crime, and human misery.