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Anti-corruption legislation in Puerto Rico: A sociolegal study of the registry of persons convicted of corruption

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Abstract

This paper engages in a sociolegal analysis of the anti-corruption legislation enacted by the Puerto Rican Government in the aftermath of hurricane María (2017). It pays particular attention to the implementation and sociolegal impact of Act 2 of January 4, 2018, entitled, "The Anti-Corruption Code for the New Puerto Rico" and the creation of a Registry of Persons Convicted of Corruption. The rationale behind the Act and the Registry is to enforce transparency, open governance, and help the Puerto Rican government in its efforts to eradicate public corruption. Conversely, this paper argues that these reforms have introduce a punitive approach to anti-corruption in PR. The paper suggests Act 2 and the Registry had have a dual outcome: 1) a punitive approach to corruption that harm people in precarious positions, and 2) normalize the structural dynamic enabling corruption of the powerful. Thus, this paper intends to illustrate the contradictions in anti-corruption as punitive governance, and the way in which a specific image of corruption is reproduced through governmental actions, legal practices, and discourses.

Key words

Corruption; anti-corruption reforms; colonialism; punitive governance; Puerto Rico

Resumen

Este artículo realiza un análisis socio-jurídico de la legislación anticorrupción promulgada por el Gobierno de Puerto Rico tras el paso del huracán María (2017). El articulo presta especial atención a la implementación e impacto socio-jurídico de la Ley

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2 de 4 de enero de 2018, titulada “El Código Anticorrupción para el Nuevo Puerto Rico” y la creación de un Registro de Personas Convictas por Actos de Corrupción. La razón fundamental detrás de la Ley y el Registro es hacer cumplir políticas de transparencia, la gobernabilidad y ayudar al gobierno de Puerto Rico en sus esfuerzos por erradicar la corrupción en el sector público. Por el contrario, este artículo argumenta que estas reformas han introducido un enfoque punitivo para combatir la corrupción en PR. El artículo sugiere que la Ley 2 y el Registro tuvieron un doble resultado: 1) un enfoque punitivo de la corrupción que perjudica a las personas en posiciones precarias, y 2) normalizar la dinámica estructural que permite la corrupción de los poderosos. Así, este artículo pretende ilustrar las contradicciones de la anticorrupción como gobernanza punitiva, y la forma en que se reproduce una imagen específica de corrupción a través de acciones gubernamentales, prácticas jurídicas y discursos legales.

Palabras clave

Corrupción; reformas anticorrupción; colonialismo; gobernanza punitiva; Puerto Rico

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1. Introduction

In recent years, Puerto Rico (PR), an unincorporated territory (or colony) of the US since 1898, has been portrayed in the media as one of the most corrupt jurisdictions in the US (Full Measure Staff 2021). Even former president Donald Trump declared on Twitter on August 28, 2019, that PR is "one of the most corrupt places on earth" (Atiles 2023). The title of being one of the most corrupt jurisdictions in the US comes as a result of a series of highly publicized cases of corruption, arrests, and prosecutions by the US federal authorities of local politicians. According to the 2019 report issued by the Public Integrity Section of the US Department of Justice, between 2010 and 2019, federal corruption convictions by the U.S. District Attorney's Office in San Juan, PR totaled 363 cases, placing PR as the ninth federal jurisdiction with the most cases. The decade before, convictions reached 268, totaling 631 in two decades (Delgado 2021).

Perhaps the most important case in which corruption and anti-corruption narratives played a key role was the resignation of former governor Ricardo Rosselló on July 24, 2019.[1] His resignation came after the leak of a now infamous *Telegram Chat (*Valentín and Minet 2019) in which Rosselló, members of his cabinet, and members of the private sector made homophobic, xenophobic, and misogynistic comments, and held discussions on key governmental and strategic issues. This, together with multiple corruption cases in his administration,[2] and the negligent management of the aftermath of hurricane María, generated a popular outcry that led to more than two consecutive weeks of a popular uprising known as the PR Summer of 2019 (LeBrón 2021, Atiles 2022a), in which hundreds of thousands of Puerto Ricans protested, marched, and rallied demanding Rosselló's resignation.

This demonstration, and Rosselló's resignation, took place while PR was dealing with a multilayered political, financial, economic, and humanitarian crisis since at least 2006. For example, in 2016, when the local government defaulted on, and stopped paying its debt, the public debt amounted to $72 billion. After the default in 2016, the US Congress passed the *Puerto Rican Oversight, Management and Economic Stability Act* (PROMESA; Public Law 114-187 of 2016) and imposed a *Fiscal Oversight and Management Board* (FOMB) onto PR. Largely justified under the pretext of public corruption in the PR government, PROMESA and the FOMB have been the US government's solutions for ensuring the survival of the capitalist financial system, guaranteeing the payment of the public debt, and bringing PR back into financial and stock markets. It was against the backdrop that hurricanes Irma and María devastated the archipelago in September 2017, leaving behind as much as $94 billion in damages. Then, in January 2020, a swarm of earthquakes[3] shocked the southwestern region of the Island, further worsening the already precarious social and political-economic situation. In March 2020, the COVID-

[1] The resignation was effective on August 2 (Mazzei and Robles 2019).

[2] See, among others, the case of corruption brought against the former Secretary of Education Julia Keleher (Mazzei 2021).

[3] On January 7th, 2020, a 6.4 magnitude earthquake struck the southern region of Puerto Rico (PR). This earthquake was the strongest to strike the island since they began on December 28th, 2019, and its aftershocks have yet to cease. The swarm of earthquakes caused the death of an elderly person; the displacement of 6,400 residents who took refuge in makeshift outdoor shelters; over 8,300 damaged houses, 2,500 of which were declared uninhabitable; and an estimated $3.1 billion in damages (Sierra 2020).

19 global pandemic arrived, and with it, more damage to the already stagnant Puerto Rican economy and its precarious sociolegal, political, and democratic institutions.

At every stage of this crisis, corruption discourses and anti-corruption legislation have been raised by the US federal government to deny access to PR to disaster relief funds and impose additional oversight and legal limitations on the autonomy of PR's government. Functionally speaking, these corruption discourses served to blame Puerto Ricans for their own suffering, rather than addressing the institutional limitations and governmental structures that render Puerto Ricans as "less deserving" of federal government support. It is precisely in this context of corruption narratives and limited sovereignty that the PR government has implemented a series of anti-corruption reforms to target corruption as a prerequisite to access disaster relief and recovery funds in the aftermath of hurricane María. That is, the PR government is often negotiating the scope of its capacity to legislate and develop its own policies, and constantly facing the threat of intervention by the US federal government with those policies and laws. To be sure, the US federal government has played a key role in the investigation and criminal prosecution of corrupt cases, as mentioned above. It is at the intersection of PR's multilayered crisis and colonial condition that this paper explores the anti-corruption reforms enacted by the PR government. Particularly, the paper engages with the analysis of Act 2 of January 4, 2018, entitled, "The Anti-Corruption Code for the New Puerto Rico" and the Registry of Persons Convicted of Corruption (Registry).[4]

This paper interrogates the effectiveness of the Registry as an anti-corruption policy. I contextualized this question in a broader reflection on the effectiveness of punitive approaches to anti-corruption legislation and by interrogating how these types of anti-corruption reforms have been implemented in the global south. I argue that this Registry, contrary to what it intended, constitutes an archive of the ways in which the Puerto Rican government has manufactured a representation of corruption, embedded in racialized understandings of corruption. These representations of corruption are rooted in a long-standing colonial and racialized narrative, in which colonized subjects are symbolically and materially imagined as corrupt (Go 2000, Muir and Gupta 2018, Doshi and Ranganathan 2019a, 2019b, Villanueva 2019, Atiles 2023). Thus, the Registry as digital archive, demonstrates how the Puerto Rican government conceives corruption as inextricably tied to race, class, gender, and other power relations.

This paper is divided into three sections. First, it provides a general overview of the current trends on anti-corruption reforms. In this section, the paper aims to locate the implementation of the Registry as a policy aiming to reduce public corruption in the broad context of global neoliberal anti-corruption reforms. Second, the paper studies the anti-corruption legislation and reforms – particularly Act 2 of 2018 – implemented by the PR government. Third, the paper discusses the Registry, and engages in an analysis of the limitations and contradictions that this punitive anti-corruption legislation entails.

2. Anticorruption as punitive governance: A sociolegal overview

There is abundant research and scholarship on corruption, anti-corruption, and the role of transnational organizations in promoting anti-corruption legislation and reforms

[4] See: https://rpcc.pr.gov/Search

(Zaloznaya *et al.* 2018, Passas 2020). This scholarship has broadly defined corruption as the abuse of entrusted power for private gain (Rose-Ackerman 1999). The definition of corruption and the anti-corruption reforms developed by this scholarship have been largely challenged by critical scholars who has pointed out the neoliberal, colonial, and neocolonial agenda, and the methodological and epistemic flaws of this scholarship (Brown and Cloke 2006, 2011, De Maria 2008, Doig 2011, Murphy 2011, Murphy and Brindusa 2018, Zaloznaya and Reisinger 2020).

The aim of this paper is not to rehearse the definitions, debates, and broad scholarship on corruption, but rather to center the analysis on the Puerto Rican anti-corruption legislation. Hence, the paper shows how these Puerto Rican laws can be understood as part of a global trend of punitive anti-corruption reforms initiated in the 2000s as part of the globalization of anti-corruption and transparency campaigns (Sampson 2010, 2015). As Sampson points out (2010), anti-corruption discourse presents itself as a global movement, circulating in a rarefied space of international conventions and platforms. Thus, as a global discourse, "anti-corruption can embrace local communities, national governments in North and South, international organizations, civil society, and an enlightened private sector into a common project" (Sampson 2010, 262). The case of PR, and the implementation of anti-corruption reforms, illustrate precisely how the PR government came to be a part of this trend or what Sampson (2010) termed the anti-corruption industry.

The Puerto Rican experiences with corruption and anti-corruption reforms have received limited attention within sociolegal, sociological, and criminological scholarship, despite PR's experiences with high-profile cases of corruption. Only recently the first interdisciplinary study of corruption, anti-corruption demonstrations and its consequences in PR has been published as a special issue in the *Centro Journal* (Atiles *et al.* 2022). Conversely, corruption has been largely covered by independent journalists,[5] local civil society organizations,[6] and by political science and public administration scholars (Dyer 1997, Torrez 2002, Bobonis *et al.* 2016, Pérez-Chiqués and Rubin 2021). Nevertheless, I have not identified scholarship interrogating the role of anti-corruption laws and reforms in PR. Furthermore, given PR's colonial condition, transnational organizations such as the Word Bank, OCDE, and Transparency International have limited information or data on PR. For example, PR has only been included in the Corruption Perception Index for the years 2012 to 2014, when it was placed in positions 63 and 62 respectively. Certainly, the lack of data on PR, and the limited indicators that have analyzed the case of PR, have entailed that the anti-corruption industry has not been developed as it has elsewhere.

[5] Which is one of the phenomena endemics to the anti-corruption industry. Passas (2020, 331) precisely points out that increased journalistic inquiries and NGO watches make corruption more visible adding to the sense that things are getting worse, thereby potentially contribution to demoralization and deviance amplification through perceptions that politicians and political institutions are fundamentally corrupt.

[6] For the past five years PR has seeing the emergence of an ecosystem of anti-corruption, pro-transparency and accountability NGO, which includes among others: The Transparency Network, Sembrando Sentido, Espacios Abiertos, Agenda Ciudadana, and the Law Clinic for the Access to Information of the Interamerican University Law School. I have been studying these organizations as part of my broader research on anti-corruption in PR, from which this paper derives.

Critical engagements with the development of the global anti-corruption agenda and concrete policies developed by transnational organizations are based on: anti-corruption epistemic development; the methodologies implemented to understand corruption across different jurisdictions; the history of the global north and International Financial Institutions' (IFIs) intervention in the global south; and the role that western law and institutional reforms imposed on non-western, global south or colonized context play. Nevertheless, there have been limited attention to the dominant punitive engagement with anti-corruption.

Several scholars have questioned the conceptualization of corruption as the abuse of entrusted power for private gain, noting that this represents a limited and myopic understanding of this phenomenon (i.e. Green and Ward 2004, Sampson 2010, 2015, Brown and Cloke 2011). Doshi and Ranganathan (2019b, 68–69) suggest that "corruption is a capacious and slippery language put to a variety of opportunistic uses. Ironically, talk of corruption may be wielded by those who are most guilty of it". It is precisely under this rubric of the malleable nature of corruption that Doshi and Ranganathan (2019a, 448) pose a working definition of corruption as a "normative discourse about the abuse of entrusted power and resulting social decay that are always implicitly positioned relative to a perceived normal or previously 'uncorrupted' state of affairs". Furthermore, the authors argue that "corruption should be understood first and foremost as a shifting and situate discourse that is yoked to symbolic, material and territorial power relations and contestations in late capitalism (Doshi and Ranganathan 2019a, 437). Following this description of corruption as shifting and situated discourse, this paper shows how PR anti-corruption legislation and reforms lack complexity and nuance, and in turn reproduced punitive understandings of anti-corruption that are inextricably tied to race, class, gender, and other relations of power.

Zaloznaya (2013) has developed an excellent critique to the methodological approaches implemented by *corruptology.* According to Zaloznaya (2013, 705–706), "corruptology is permeated with inaccurate and profoundly non-sociological assumptions, adopted from *anti-corruptionsm* – the transnational movements coordinated by Western business and political elites and carried out by international and local NGOs, national governments, and grassroots organizations". Sampson (2010) has demonstrated how the anti-corruption industry is an ever-expanding field of opportunities in which anti-corruption programmes enable the anti-corruption industry to coexist along with the corruption it ostensibly is combating.

By the same token, Zaloznaya (2013) argues that anti-corruptionism is largely based on three problematic methodological and epistemic assumptions. First, corruption is a deviation from rational-legal bureaucratic context. This Weberian understanding of corruption entails that it is construed as a self-interested deviation from an optimal bureaucratic order, uniformly detrimental to the moral fabric of a society. Zaloznaya (2013) points out that conceptualization of bureaucracy as a mode of social organization is foreign to many non-Western societies. These societies are often characterized by underdefined and flexible boundaries between private and public spheres, and a spillover of kin obligations, spirituality, and other private rationales into public domains. Passas (2020) states that western bureaucratization and regulations imposed in the global south occasionally do little to counter fraud and mismanagement, but

effectively create new incentives to circumvent the rules and engage in corruption practices.

Moreover, it is important to note that bureaucratic and rationalistic approaches to corruption are embedded in an understanding of good governance and corruption that reproduces Eurocentric and colonial practices. For example, Muir and Gupta (2018, s6) argue that corruption, as a key category of modern political economy, typically indexes the nonmodern. Similarly, Haller and Shore (2005) point out that ideas of corruption and economic backwardness (as opposed to civilized enlightened values of fairness, openness, and transparency) have consistently featured in imperialist and racialized historical narratives that invoke the primitiveness of less-developed states in order to justify colonial interventions. Corruption discourses, and descriptions of colonial territories and subjects as corrupt, are a constitutive part of Western colonialism (Go 2000, Pierce 2006, Miller 2008, Cockcroft and Wegener 2017, Apata 2019). As Ranganathan and Doshi (2017) put it, "the potential corruption of western anti-colonial warriors themselves and the history of colonial, neocolonial, and capitalist relations in perpetuating state looting, autocracy, and oppression abroad were often rendered invisible by neoliberal anti-corruption agendas."

Thus, as the case of PR demonstrates, corruption narratives were, and continue to be, key technology for justifying colonialism of non-western societies (Villanueva 2019). Nevertheless, colonial corruption narratives have mutated together with global capitalist dynamics and economic policies. Thus, today, anti-corruption reforms play a central role in neoliberalism, and in the financialization of the economy. As Radics (2001, 40) has shown in his analysis of anti-corruption reforms in the Philippines, "corruption becomes part of the hegemonic global economic system, institutionalized by the history of colonization and sustained by the structural forces of capitalism". That is, corruption has been key to the historical transformation of global capitalism, from colonialism to neoliberal globalization.

Second, Zaloznaya (2013) argues that for anti-corruptionism, corruption is motivated by instrumental calculus. As a primarily economic movement, anti-corruptionism embraces a utilitarian model of action that assumes that behavioral choices reflect actors' cost-and-benefit calculus (Zaloznaya 2013, 711). Based on this body of research that links corruption to poor economic performance and weak democratic institutions, the World Bank and other IFIs have declared corruption the single greatest obstacle to economic and social development worldwide (Zaloznaya and Reisinger 2020, 78). As a result, IFIs currently invest significant amounts of time and effort on initiatives that are not fundamentally different from colonialism (Brown and Cloke 2006, 2011, de Maria 2008, Murphy and Brindusa 2018).

This perspective explains corruption as a problem created by poor governance in weak developing states, and it obscures any possibility that IFIs' policies themselves influence the conditions in which corruption exists (Brown and Cloke 2006). This precisely shows that the dialectic of corruption and anti-corruption is in constant movement, as each anti-corruption effort transforms the logic of corrupt practices, and each corrupt practice calls forth new kinds of anti-corruption measures (Muir and Gupta 2018, s8). In short, for many global north countries and IFIs, standing against corruption allows state officials

to construct a moral and economic narrative that legitimizes all manner of political interventions at local and national levels, as well as globally.

Third, for anti-corruptionism, corruption is bad, and absence of corruption is good. This approach, as Zaloznaya (2013) shows, lacks nuance, complexity, and a concrete understanding of localized power. Perhaps one of the most consistent critiques to this approach is the hyper-emphasis on surveying, indexing, and comparing the degree of corruption in each country *a la* Corruption Perception Index. There is an important tradition of sociolegal scholars that have questioned the effectiveness of indicators as a form of governance (Merry 2011, Davis 2012, Davis *et al.* 2012, Boggio 2020). Methodologically, the index-based studies use homogenized indicators to analyze corruption, thus ignoring the context in which corruption takes place (Sampson 2010, 2015). This results in pre-made homogenous anti-corruption reform packages that are applied indiscriminately in sociopolitical and legal contexts. Anti-corruption reforms in this form are often imposed by the same international institutions as structural adjustment policies that demand the removal of protective economic policies and encourage privatization and market reform. Anti-corruption reforms and measures are used prescriptively as a precondition to grant aid, debt relief, economic development packages or membership to international bodies (Whyte 2015).

The history of the establishment of anti-corruption reforms reflects the now widely accepted three-pronged approach to fighting corruption. These approaches are public education, prevention, and investigation and prosecution. This triple structure is usually reflected in the organizational structure of independent corruption agencies. Furthermore, the most common anti-corruption policies recommended by transnational organizations include asset and interest declarations; beneficial ownership transparency; transparency in political financing; whistleblowing; transparency in lobbying; and open contracting.

In this sense, there are several critical engagements with anti-corruption reforms promoted by IFIs in the global south. Particularly, there is a corpus of literature that focuses on the flawed implementation of anti-corruption reforms in post-socialist countries and the global south (Nasuti 2016, Chen and Ma 2017, Heinrich and Brown 2017, Zaloznaya *et al.* 2018, Choi and Bak 2019, Zaloznaya and Reisinger 2020). However, the Registry of Convicted Persons of Corruption, a key anti-corruption policy in PR, has not been discussed by the anti-corruption scholarship or transnational anti-corruption organizations[7].

My contention is that the uses of the Registry constitute an example of what LeBrón (2019) has termed as punitive governance. Accordingly,

> Punitive governance also refers to the ideological work undertaken by the state to promote an understanding that punishment, justice, and safety are intrinsically linked (…). Punitive governance has left an indelible mark on how life and death are understood and experienced in Puerto Rico and has done so in a way that reinforces

[7] Contrarily, Transparency International and the Global Anti-Corruption Consortium have been advancing the idea that states should create a Public Beneficial Ownership registry to fight corruption. See: https://www.transparency.org/en/news/how-public-beneficial-ownership-registers-advance-anti-corruption

> societal inequalities along lines of race, class, spatial location, gender, sexuality, and citizenship status. (LeBrón 2019, p. 3)

Punitive governance goes hand in hand with Gilmore's (2007) binomial description of state power in neoliberal times as organized abandonment and organized violence. Organized abandonment refers to the direct consequence of the neoliberal policies and austerity measures implemented to address periods of economic crisis. That is, at the same time that the state imposes structural adjustments, and engages in systemic cutbacks of welfare programs undermining the already precarious living conditions of the most vulnerable sectors of society (organized abandonment); the state criminalizes and enforces stricter security measures, anti-corruption reforms, and violent policing practices against the poor and racialized populations (organized violence). My contention is that the Puerto Rican government's implementation of punitive governance constitutes a particular exemplary case of organized abandonment and organized violence in a colonized global south country. As LeBrón (2019, p. 3) points out, "punitive governance functions through an unequal distribution of resources and life changes that affects those populations occupying some of the most tenuous positions in Puerto Rican society". These dynamics are clearly portrayed in the registry, where most individuals included there are poor and racialized people.

In what follows, this paper engages with the anti-corruption legislation and reforms introduced by the PR government. The aim of the next section is to demonstrate how the PR government's anti-corruptionism legislation ended up punishing petty corruption and normalizing systemic corruption in PR. To be sure, systemic corruption and corruption of the powerful included instances of state-corporate crime, fraud, state capture, money launder and legislation that facilitate powerful actors to extract wealth and resources from PR.[8]

3. Colonial anti-corruption reforms: Developing punitive governance in PR

Ricardo Rosselló's (New Progressive Party) administration placed anti-corruption reforms at the center of its political discourses. Between 2017 and 2019, Rosselló's administration legislated a series of policies intended to transform the Puerto Rican government and public administration. These reforms followed internationally led anti-corruption practices, such as good governance policies; administrative and civil service reforms that advance meritocratic hiring; wage incentive programs; electronic government platforms, and publicly accessible database of official incomes and public procurement. Nevertheless, Rosselló's administration and local elites manufactured an understanding of corruption associated only with specific violations of law. This focus on legality produced a hyper-emphasis on petty corruption or the individual cases of fraud, bribery, kickbacks, and pay-for-play conduct by public employees. Yet, this emphasis ignores the structural dynamics of corruption and how it manifests through cronyism, patrimonialism, legislation, and economic policies that favor corporations and the local elites to the detriment of the public good.

To be sure, Rosselló's administration implemented the following anti-corruption reforms:

[8] For a detailed analysis of the crime of powerful in PR see Atiles (2020, 2021, 2022b).

1. Executive Order OE-2017-10 of January 10, 2017 to create a Public Policy of Transparency;
2. Act 8 of February 2017 entitled, Government of Puerto Rico Administration and Transformation Act;
3. Act 15 of February 28, 2017, to create the Office of the Inspector General of the Government of PR;
4. The Anti-Corruption Code for the New Puerto Rico (Act 2 of January 4, 2018);
5. Executive Order OE-2019-31 of July 2, 2019, to create a public registry of lobbyists under the argument that it would limit corruption;
6. Act 122 of August 1 of 2019 entitled, Government of Puerto Rico Open Data Act;
7. Act 141 of August 1 of 2019 entitled, Transparency and Expedited Procedure for Access to Public Information Act;
8. Act 144 of September 6, 2019, amending several parts of Act 2 of 2018, including the protections for whistleblowers.

For the purpose of this paper, I will be focusing only on Act 2 of 2018, and its punitive and legalistic views of corruption[9]. It is important to note, that this legalistic approach to corruption is paradigmatic, since once again it reinforces the narrative of individual corruption and ignores the structural dynamics that generates these offenses.

The Act[10] aimed at unifying the different existing anti-corruption laws, therefore, "strengthening the tools to fight corruption and broaden the protections available to individuals who report acts of corruption" (Statement of Motives). Furthermore, the Act establishes that "zero tolerance for corruption is hereby declared as public policy". The Act's zero tolerance is accompanied with a punitive approach to petty corruption. Passas (2020) reminds us that zero tolerance approaches tend to fail, and often clash with the need to create multigenerational anti-corruption efforts. Contrary to this trend, the PR government intends to solve the problem of corruption by enforcing a law reform. According to Passas (2020), overemphasizing the law is one of the biggest challenges of anti-corruption reforms. The author argues that numerous examples of reforms in public procurement systems illustrate how there are diminishing returns when too many rules and procedures render public-private engagement too burdensome and at times undesirable (Passas 2020, 332). To be sure, throwing law at the problem clearly does not solve it (Passas 2020).

Despite these critical approaches to the hyper-legalization of anti-corruption, the PR government has insisted on legal reforms and/or "throwing law at the problem". It is precisely in this context that the Act 2 of 2018 was initially sent by the Fortaleza (the governor's office) to the legislative assembly on November 29, 2017, and, in less than two months, had already been transformed into law. It is important to note how quickly the Act was enacted. It must also be noted that, in November 2017, just two months after hurricane María, the majority of Puerto Ricans were without electricity, telecommunications and potable water, and recovery efforts were barely underway.

[9] For an in-depth analysis of the anticorruption reforms introduced by Rosselló's administration see Atiles (2022a).

[10] At the time of writing there are significant efforts to amend the Act by anti-corruption NGO such as Sembrando Sentido.

Therefore, having information on or even attending public hearings on the Act was practically impossible. This Act was approved to some extent as a prerequisite for obtaining federal recovery funds (especially after multiple corruption cases in the days following hurricane María[11]). That is, the Act was designed to address the administrative limitation imposed by the federal government in the aftermath of the hurricanes.

The Rosselló administration describe the Act as an effective mechanism in the fight against public corruption. Borrowing tropes of the war on drugs, the signing ceremony of the new Anticorruption Code was embedded in symbolism and performative of a united from against corruption. For example, in the signing ceremony, Rosselló surrounded himself by Wanda Vazquez, then secretary of Justice, the directors of the PR's anticorruption, accountability, ethic and law enforcement agencies, the director of the FBI in PR and the US District Attorney for PR.[12] Rosselló declared that the Act strengths the protection to whistleblowers; takes action against contractors who approach the government with the intention of committing acts of corruption; has the necessary mechanisms to combat the so-called political investment; and that the government can claim civilly and claim compensation for triple the damage caused to the treasury.[13] Despite the celebratory tone, there was limited discussion of the implementation of the law, and how this law contributed or enable the access to recovery funds. Much like the war on drug, as I show below, the fight against corruption in PR will be a war fought against the poor, racialized, and marginalized population.

In many ways, Act 2 reproduces the practices identified in the analysis of anti-corruption industry. For example, the Act defined corruption in its Statement of Motives as the "abuse of a public authority to obtain undue advantage, generally secretly and privately". It goes on and argues that other forms of corruption in PR are the "improper use of privileged information, patronage, bribery, influence peddling, extortion, fraud, embezzlement, malfeasance in office, quid pro quo, cronyism, co-optation, nepotism, impunity, and despotism". That is, the Act follows the restrictive definitions of corruption developed by the anti-corruption industry. These are definitions that often see corruption as a problem of the public sector, bureaucracy, individuals with personal interests, and as a result of the unnecessary concentration of economic decision-making in the hands of governments (Whyte 2015). Hence, transnational organizations tend to recommend privatization of public agencies and corporations, deregulation and opening to the free market. These public policies do not close the door to corruption, but rather reproduce the misconception that the private sector is free of corruption and conflict of interests (Whyte 2015).

Even when Act 2 acknowledges that the most common manifestations of corruption in PR are the result of the strong ties between public officials and the private sector, and the normalization of bribery, the anti-corruption measures developed by the Act are merely targeting the public sector. Act 2 pushes further on this artificial distinction in Title III, by introducing a "Code of Ethics for Contractors, Suppliers and Applicants for Economic Incentives of the Executive Agencies". In it, Act 2 established the way the

[11] Some examples are the corrupt cases of FEMA and the US Army Corps of Engineers and millions of dollars in contracts to Whitefish and Cobra (Newkirk 2017).
[12] All of which constitute the Anti-corruption Interagency Group (Section 7).
[13] See: https://sincomillas.com/convierten-en-ley-el-codigo-anticorrupcion/

public and private sectors should interact, and most importantly, how the private sector ought to address public employees. A telling instance of the misleading anti-corruption measures is that the Code of Ethics, on the one hand, emphasizes the responsibility of the private contractor to maintain a higher standard (therefore, assuming that public employees are corruptible and that the private sector should maintain a higher moral ground); and, on the other hand, emphasizes the propensity of public officers of lower ranks to engage in corruption. That is, Act 2 only emphasizes penalizing members of the public sector without acknowledging corruption in the private sector.

In tandem with this, the Act promotes a punitive approach to anti-corruption (see Section 3.7; Title IV, Sections 4.2, 4.4, 4.5, 4.6; and Title V). To advance this punitive approach, Act 2 expands the list of offenses that are excluded from the benefits of the Suspended Sentence. Additionally, the Act expands the mandatory training on sound administration; facilitates access to public information and transparency; and broadens the rights of whistleblowers (see Section 4.2). Additionally, Act 144 of 2019 introduces additional legal protections for whistleblowers, amending Act 2, and guarantees that public employees and officials who report acts of corruption are offered free legal assistance. The whistleblowing reforms are important, since they reproduce what Sampson (2019) has called disclosure regimes. Once again, we can see the hyper-emphasis on the public sector and the lack of problematization of the structural nature of corruption in the neoliberal colonial system.

Section 6 of the Act constitutes further evidence of the punitive approach undertaken by the PR government. Section 6 establishes that the PR Department of Justice (PRDJ) must create a public Registry of Persons Convicted of Corruption and Related Offenses, that includes:

> (a)The full name of the person convicted of corruption;
>
> (b)The case number, jurisdiction, and court that entered the judgment;
>
> (c)The date judgment was entered or date of conviction for corruption;
>
> (d) The offense for which the person was convicted, and punishment was imposed (Section 6.4)

This anti-corruption measure has been in place since 1997, when it was first introduced by Act 119 of September 7, 1997. Originally, the law required the Puerto Rican Police Department (PRPD) to keep a Registry of Persons Convicted of Corruption. This Act was amended by Act 141 of August 8, 2016, in which the Registry was transferred to the PRDJ. Despite Act 119 and Act 141 requiring that the Registry be kept public, there is no evidence that neither the PRPD nor the PRDJ did so. As has been previously stated, Act 2 maintained the Registry under the purview of the PRDJ. According to Section 6.2, the "Registry of Persons Convicted of Corruption" shall include any person convicted of any of the following offenses:

> (a) Offenses established in Chapter IV of Act 1 of 2012[14], as amended, or similar offenses in previous or subsequent laws.

[14] The Act can be consulted here: https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Y%20-%20Inglés/1-2012.pdf

> (b) Offenses provided in Sections 3.7 and 4.4 of this Code (i.e. Act 2 of 2018[15]).
>
> (c) Sections 250 through 266 of Act No. 146-2012,[16] as amended, known as the "Penal Code of PR," or similar offenses in previous or subsequent laws
>
> (d) Any of the offenses listed in Section 6.8 of Act 8 of 2017[17] as amended, when the offense was committed in the exercise of a public function or whenever public funds, or assets have been involved.

As it will be shown in the discussion below, most of these offenses are nowhere to be found in the Registry. Oppositely, the great majority of the offenses included in the Registry correspond to laws that have been derogated or that are not included on this list.

In the same vein, Section 6.3. of Act 2 establishes that "the Registry shall only apply to persons who have been convicted of the commission of the offense as co-perpetrator with a public official, whether or not they are public officials". This is important, since many of those that have been included in the Registry are not necessarily public employees. Section 6.5. establishes the duties and obligations of the Secretary of the PRDJ[18] to be

> the custodian of the information entered in the Registry and shall be responsible for keeping and updating the information in the Registry. Moreover, the Department shall ensure that the information of the Registry is available electronically to be examined by government agencies and the public. Until this is achieved, the Department shall disclose the information to the designated persons in every agency and municipality of the Government of Puerto Rico.

As this paper shows, the PRDJ and the Secretary of Justice did not fulfill the duties above established, but rather deliberately did not make the Registry public, obstructed access to the information and did not invest in its upkeep or update. This is particularly clear when consider the legal mobilizations and litigation initiated by civil society organizations to access the information in this Registry. On March 7, 2021, the anti-corruption, transparency, and accountability organization *Sembrando Sentido*[19] successfully sued the PRDJ to make public the Registry (Serrano 2021). This happened after several request made by *Sembrando Sentido* and the Law Clinic for the Access to Information of the Interamerican University of PR (Law clinic) to access the information. On March 21, 2021, the PRDJ sent the list of names or a preliminary registry with only 19 individuals to *Sembrando Sentido* (Serrano 2021). After additional efforts made by *Sembrando Sentido,* the PRDJ created the website and made the information public.

In addition to the Registry, Act 2 also created an Anti-corruption Interagency Group (Section 7), with the participation of members of the federal and local governments, involving the following functions: guaranteeing proper interagency communication and

[15] It can be consulted here: https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Y%20-%20Inglés/2-2018.pdf

[16] The Penal Code of PR can be consulted here: https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Justicia/146-2012/146-2012.pdf

[17] Act 6 of 2017 can be consulted here: https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/Y%20-%20Inglés/8-2017.pdf

[18] In PR the Secretary of the PRDJ fulfills the duties or is equivalent to the US Attorney General.

[19] See: https://www.sembrandosentido.org

cooperation in all anti-corruption efforts; collaborating with the Office of Government Ethics in any effort geared towards preventing and eradicating corruption; improving the ability of the Government to receive information on potential acts of corruption; and improving procedures so as to avoid impunity (Section 7.2).

To date, there is no information on the application and uses of this Act as an anti-corruption policy. On the contrary, recent cases of corruption have been brought by the US Department of Justice. It is important to note, that unlike any other US jurisdictions, PR is not allowed to present state charges against individuals that have been already convicted in the federal justice system. This is a result of the 2016 case of *Puerto Rico v Sanchez-Valles*, in which the Supreme Court ruled that prosecution by PR state courts of cases that have already been prosecuted in federal courts violates the Double Jeopardy Clause. Therefore, the PR state courts, and the PRDJ are unable to prosecute individuals convicted of corruption at the federal level in the PR jurisdiction. Thus, this has entailed that all major cases of corruption in recent years, from Anaudi Hernandez (Lawlor 2016), Julia Keleher (Feliciano Reyes 2022), to the ongoing case against former governor Wanda Vazquez (Robles 2022) have all be carried out at the federal level. This has entailed that the PRDJ has mainly used Act 2 to address cases of petty corruption, which are not normally prosecuted in the federal system.

Against this background, one year after the enactment of Act 2 of 2018, Rosselló's administration found itself facing numerous corruption cases, including the leak of the Telegram Chat. This further exemplifies how corruption works in entirely quotidian ways with no need for "backroom deals". Even when the sociopolitical demonstrations known as the Summer of 2019 began, Rosselló's statements emphasized describing the case as a purely technical problem that a law or executive order could solve. Under this understanding that Rosselló issued Executive Order OE-2019-31 of July 2, 2019. The Executive Order follows the same rationale of Act 2 of 2018, that is, it focuses on petty corruption, and on the separation between the public and private sectors. The key aspect of this Executive Order is to create a Registry of Lobbyists that in theory would bring transparency.[20] However, the Executive Order does not tackle the key problems identified in this paper so far, anticorruption legislation in PR operates along the lines of race, gender, and class.

4. A sociolegal reading of the registry of persons convicted of corruption

The Registry contains 7,141 individuals (5,653 men and 1469 women) that accordingly have been convicted of corruption. Despite the Registry including 7,141, the data provided on the specific "offenses" on the section entitled "statistics" only accounts for 3,295.[21] Contradictorily, on the account by towns, the totality of individuals account for 7, 141 individuals.[22] This discrepancy between the headshots, names, and information of

[20] Unlike the Registry of Persons Convicted of Corruption, the Registry of Lobbyists (which is also administered by the PRDJ) contains no headshot, no personal information, and no financial disclosure. In total, the Registry of Lobbyists contains 30 corporations, law firms and individuals that "voluntarily" provided information about their business with the Puerto Rican government.

[21] See: https://rpcc.pr.gov/Statistics

[22] It's interesting to note that the Registry provided a categorization by towns or municipalities, which in theory this should not be a factor to take into consideration, since unlike the Registry of Sex offenders, there

the people included in the Registry and the data analyzed by SNAC LLC[23] is important, since it illustrates the poor management, processing and accounting for the Registry and the individuals there included.

While my analysis of the Registry was largely based on the cases or offenses for which the individuals were convicted, it is important to note that the Registry also operates along the lines of race, gender, and class. As mentioned above, corruption in colonial settings and in the global south is inextricably tied to race, gender, class, and other power relations. In this sense, it is important to note that the Registry only accounts for gender identities within the gender binary. Furthermore, there is no description or self-identification option for race or ethnic categories. This is important given that, when examining the Registry, one can notice that most of the individuals included are impoverished and racialized individuals within the Puerto Rican gaze.

In what follows, I am going to expose the data as provided by the PRDJ (see Table 1 for an in-depth exposition). Firstly, it is important to note that 2,739[24] persons were included in the Registry for aggravated larceny or a violation of Article 193 of Law 149 of June 18, 2004 (Penal Code) in its different modalities. The Penal Code defines aggravated larceny as "taking public property or funds, or goods whose value exceeds one thousand dollars ($1,000)". Similarly, the Penal Code stablishes the following aggravating circumstances to be considered at the time of imposing a penalty for aggravate larceny

> if the stolen goods are cattle, horses, pigs, rabbits, or sheep, including the offspring thereof, fruits or crops, poultry, fish, shrimp, bees, agricultural machinery, and equipment located in a farm or in a production or breeding facility, any other machinery or farm equipment located in a private property, business, or agricultural facility, or any items, tools, and/or machine parts used for such purposes.

The fact that 2,739 individuals have been included in the Registry for aggravated larceny—a felony that does not necessarily entail corruption, but rather, a property crime—raises some doubts about the accuracy and adequacy of the Registry. Furthermore, when conducting observer identification of the individuals included in the Registry for this felony, one can observe that the great majority of them are young black men, many of whom were sentenced before the enactment of Act 2.

In third place are cases of fraud or violations to Article 210.B of the Penal Code, with 144 persons. Article 210B entails: "to perform acts or omissions that deprive another person or that affect the estate rights or interests on real or personal property of said person to the prejudice of the same, the State or a third party to their prejudice." While in fourth place, there are 92 individuals convicted for aggravated damage or violations to Article 208.D of the Penal Code, which comes into effect when "(d) when the damages are

is not needed to establish the geolocation of convicted of corruptions. It is also important to note that town Unknown accounts for the third "town" with more cases with 334 persons convicted for corruption.

[23] That is, the management and upkeep of the Registry has been externalized to a corporation created on May 17, 2019. This shows how anti-corruption reforms and policies create the opportunity for profiteering and/or for corporations to capitalize on the anti-corruption business. The contracts amounted to $639,043.00. All this information is public and can be found in the PR Comptroller Offices webpage: https://consultacontratos.ocpr.gov.pr. Also, *Sembrando Sentido* has created a website entitle Contratos en Ley, where all contracts made by the PR government can be found. See: https://www.contratosenley.org/buscador

[24] This accounts for the First and Second category as shown in Table 1.

caused to real or personal property owned by the Commonwealth of Puerto Rico or by private non-profit entities or devoted to education."

Up to this point, there are no convictions that necessarily entail corruption, but rather property crimes. It is only in the fifth place where one can find the first convictions (70 persons) for violations to Article 3.2 of Law 12 of July 1985 or the "Code of Ethics of the PR Government ". This code has already been derogated by Act 1 of January 3, 2012 (which is currently under review) (see Pérez Vargas 2021). The first violations to Act 1 of 2012 are shown in the 27th position (Article 4.2.B, with 4 persons), and 28th (Article 4.2.O, with 4 persons). Article 4.2.B entails that "no public servant shall exploit the duties and powers of his/her office or public property or funds to directly or indirectly obtain any benefit not permitted by law for him/herself or a private person or business." While Article 4.2.O states that "no public servant shall usurp an office or task to which he/she has not been appointed or designated nor discharge the same without being duly qualified to do so".

Now, notice that the criminal violations Chapter IV of Act 1 of 2012, which are the first group or types of violations that Act 2 includes, are only to be found in places 27 and 28. Similarly, note that the only violations included in Act 2, are those on Sections 250 through 266 of the Penal Code appear in place 9 (Article 261, with 10 persons). As a result, one can only assume that the great majority of persons included in this Registry are not necessarily there for offenses related to Act 2, but for other types of criminal offenses.

Furthermore, when I look for the names and cases of politicians that were convicted for corruption in PR, only few of them are included in the Registry (i.e. Abel Nazario, Victor Fajardo, Edison Misla Aldarondo). This type of approach to the research not only entails general knowledge of Puerto Rican politics, but it also means that to the observer, that information is hidden among thousands of individuals that were unnecessarily charged with corruption cases. According to the interim director of the Criminal Justice Information System of the PRDJ, Angel Rivera González, this issue, among others, is the result of lack of sharing of information among law enforcement and accountability agencies. Rivera González stated[25] that some of the problem with the registry, includes: 1) that the registry is outdated, and that "you might not find individuals recently convicted of corruption"; 2) that the Registry "does not contain the big names or big cases of corruption, since those are normally prosecuted in the federal court"; 3) that the federal government does not provide the PRDJ with the information of the individuals convicted of corruptions; 4) that other Puerto Rican anti-corruption agencies, such as the Office of the Independent Special Prosecutors, and the Governmental Ethic Office, do not provide them information about the investigation and cases; 5) that he does not know why there are people in the Registry for cases such as aggravated larceny. He stated that many of the people in the Registry might not be there since they were not necessarily involved in cases of corruption.

This is troublesome since the purpose of the Act and the Registry is to promote anti-corruption and transparency. Nevertheless, the Registry does the opposite. Observers

[25] In a phone interview with the author, on Tuesday, August 31, 2021. The interview was conducted as part of my fieldwork with anti-corruption organizations and agencies in PR.

are left with a series of headshots, offenses and contradictory information that do not necessarily contribute to transparency and anti-corruption, but rather, misled the observer and makes them believe that there is an actual Registry containing all this information. Furthermore, individuals included in this Registry are publicly exposed as corrupt, when probably the offences where result of property crime, which in turns enhances the harm produce by punitive policies developed by the PR government.

Hence, after considering the Registry, one can argue that it undermines the PR government's effort to eradicate corruption. The fact that the Registry is outdated and contains the profiles of people that were not convicted for acts of corruption—but instead for other cases, provides the opposite image. That is, rather than depicting a fight against corruption, this Registry reproduces punitive approaches that targets the black poor men and the powerless.

In that sense, we must ask, how effective is this policy in reducing corruption? At first glance, one can argue that the Registry has proven to be ineffective. Not only is it highly unknown that the individuals convicted of corruption are not necessarily included. Paradoxically, the Registry reproduces the practices of lack of transparency and lack of accountability that civil society organizations have been pointing out as one of the key problems in the government.

5. Conclusion

The analysis of the PR anti-corruption legislation and the Registry demonstrate the limited impact that these legislations have in reducing public corruption. In general terms, Act 2 and the Registry demonstrate that anti-corruption reforms are inoperative, given the limitations imposed by the US federal legal system, and because of PR government's punitive and racialized enforcement of this law. As a result, this anti-corruption legislation ended up harming those in precarious positions.

That is, when laws are inoperative, they produce, on the one hand, a punitive implementation against the powerless, and on the other hand, normalize the structural dynamic that generates corruption, or what I have called the corruption of the powerful. To be sure, Act 2 operates as a façade of anti-corruption that in fact does not address corruption, but normalizes a concrete representation of corruption, in which poor and racialized individuals are defined and portrayed as corrupt. The constant representation of poor, racialized men as corrupt, I have argued deviated the attention from economic crimes and corruption cases involving the local elites, corporations, and state actors. The inadequate management of the Registry, and the misleading representation of corruption by those in charge of upkeeping it, can thus be understood as well as a manifestation of anti-corruption corruption or the corruption of the powerful.

Furthermore, what the Registry demonstrates is that anti-corruption legislation and policies, and their implementation have taken away economic and political resources that could have been implemented to target social inequalities or for regulations that target the structural dynamic causing corruption. As a result, one can argue that the Act created the mechanism for anti-corruption corruption. This is an important contradiction that this paper aimed to elucidate. That is, the limitation of the Registry and the anti-corruption legislation in PR go beyond the lack of implementation and addresses the concrete epistemic and methodological approaches behind the design of these

legislations. Thus, the problem is not the result of a contradiction between law in books and law in actions, or the need for more efficient legislation. But rather, we need to reflect on the ways in which reforms are designed to be inoperative. This is illustrated by analysis of the implementation of the Registry, and the fact that it does not serve the purpose of reducing public corruption. Thus, punitive governance.

The Registry constitutes an archive of the ways in which the Puerto Rican government has manufactured a concrete idea of corruption. That is, petty corruption or the corruption of the powerless, which is inextricably tied to race, class, gender, and other relations of power. This idea, however, is not new, but rather, embedded in a long colonial narrative, in which colonized subjects are always imagined as corrupt. What is new is that this time, we have a clear portrayal and digital evidence of how the Puerto Rican government conceives corruption, and more importantly, the impact that anti-corruption legislation has when implemented as part of a colonial-neoliberal regime.

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