

<https://internationalviewpoint.org/spip.php?article619>



Puerto Rico

# Colonialism and the Death Penalty

- IV Online magazine - 2001 - IV334 - October 2001 -

Publication date: Sunday 14 October 2001

---

Copyright © International Viewpoint - online socialist magazine - All rights  
reserved

---

**The Federal Death Penalty Act of 1994 approved by the United States provides for the application of the death penalty in a series of newly defined federal crimes. In Puerto Rico, this law has provoked a wide debate: a discussion which combines the issue of capital punishment with questions arising from the specific colonial status of Puerto Rico.**

The United States is one of the most active practitioners of the death penalty. As such, it has been a major target of the international movement against capital punishment. The fact that the US is now exporting the death penalty to Puerto Rico, where it was abolished in 1929, is far less known. This situation should be of interest for those involved in the struggle for democratic rights, which includes the struggle against both colonialism and the death penalty.

Puerto Rico became a US colony in 1898, as a result of the Spanish-American War. The death penalty, which had existed under Spanish rule, was retained by the new authorities. There were 23 executions between 1898 and 1929. All those executed were poor, at least 14 were black. [1]

Initially, even the old Spanish method of execution (the garrote) remained in use, but soon enough the process was Americanised with the introduction of hanging. Some of the last prisoners put to death with the old mechanism were among those convicted for participating in the *partidas sediciosas*, raiding rural bands which took advantage of the dislocations caused by the war to attack and sack haciendas in the interior of the island (in at least some cases in retribution for years of abuse and oppression).

After a period of military rule (1898-1900), the US organized its colonial authority over Puerto Rico under the Foraker Act (1900-1917) and the Jones Act (1917-1950/52). Under the first, Puerto Ricans were allowed to elect the lower and, under the second, both chambers of the colonial legislature. The Governor as well as other executive officials, however, were named by the President of the United States. The struggle against the death penalty began soon after 1898. [2]

As opposed to what is sometimes said, this had, in most cases, little to do with Puerto Rico's Catholic traditions. The most visible early opponents of the death penalty were people like Rosendo Matienzo and Rafael Lopez, exponents of the liberal, pro-labour and enlightened currents influential among some professional sectors of the time, a current which combined its support for political democracy and (sometimes quite radical) social and labour reforms with anticlerical, anti-Catholic, "spiritist" and "freethinking" ideas. Matienzo, a radical democrat, influenced, among other things, by the US anti-trust and the New Zealand labour movements, introduced bills in the House of Delegates on at least three occasions (1907, 1909, 1910) providing for the abolition of the death penalty. [3]

## Bills defeated

The bills were opposed by the President of the House, Jose De Diego, a figure strongly identified with Catholic and otherwise conservative and anti-labour views: his defence of capital punishment in particular was based on Lombroso's theory of "innate criminals". The bills were defeated. Opposition to the death penalty kept growing during the 1910s and 1920s, with the support, among others, of important leaders of the growing and influential Socialist Party, which had been organized in 1915. Future colonial governor Luis Muñoz Marín was among those who came to oppose the death penalty after witnessing an execution in 1917. [4]

The death penalty was abolished in Puerto Rico in 1929. All indications point to the conclusion that this decision enjoyed widespread support. During the 1930s, Governor Blanton Winship, best known for his brutal repression of the Nationalist movement in such events as the Ponce Massacre (1937), sought to reintroduce capital punishment, but the insular legislature, evidently conscious of the lack of support for such a move, did not follow his advice. [5]

A series of internal and international tensions led the US to reorganize its rule over Puerto Rico after 1950. It became necessary to convince the world that Puerto Rico was no longer a colony, that it had somehow achieved full self-determination within a new and unique relationship with the US Congress approved legislation which allowed Puerto Ricans to write their own constitution, an exercise which was presented both as a "compact" between Puerto Rico and the US and as an extension to Puerto Rico of the principle of "government by consent".

Nevertheless, the new Constitution and the government of the Estado Libre Asociado (ELA) which it organized only have jurisdiction over local matters: most dispositions regarding the relation of Puerto Rico to the US under the previous Jones Act remained unchanged (renamed as the Puerto Rican Federal Relations Act of 1950).

## Convention

Within the limits imposed by Congress, a Constitutional convention was convened. A majority of its delegates were members of the Partido Popular Democrático (led by Muñoz), a party which had dominated island politics since 1940, when it had won the elections under an agrarian and social reform program in many ways influenced by Roosevelt's the New Deal.

Article II, Section 7 of the new Constitution declared in no uncertain terms: "The death penalty shall not exist". (In fact, during the constitutional debate, Luis Ferré, grand old man of the statehood movement sought, unsuccessfully, to soften the terms of this prohibition).

Nevertheless, as we pointed out, the Puerto Rican Federal Relations Act, sister document of the ELA Constitution, provides that federal laws "not locally inapplicable" will have the same force in Puerto Rico as in the rest of the US. What happens then, if an act of Congress comes into conflict with the ELA Constitution?

The political consequences of how one answers this question are not insignificant: for one thing, if Congress can act in Puerto Rico in contradiction with explicit provisions of the ELA Constitution, where does that leave the notion that the ELA implied a "compact" between Puerto Rico and Congress? Even if one adds the argument that other states of the US find themselves in a similar situation (their state constitutions overridden by federal acts), the fact is that the ELA has no representation in Congress: thus, if Congress, in which Puerto Rico has no representation can override a Constitution which Puerto Rico did approve (I leave aside the many flaws involved in that process) where does that leave the notion "government by consent"?

This is the problem, the problem of the colonial nature of the existing status, which has now been posed point blank around a - literally - life and death issue: the applicability of the FDPA to Puerto Rico.

On July 2000 Federal Judge Salvador Casellas in San Juan forbade federal prosecutors from seeking the death penalty in Puerto Rico under the FDPA. [6] One must admit that his decision, far from avoiding controversy, posed some of the political issues implicit in this case quite forcefully.

Judge Casellas based his decision on two arguments. The first hinges on the specific nature of the death penalty and

on the fact that the FDPA contains no clear expression of the intent of Congress to extend its provisions to the island.

While recognizing the fact that in the past the courts have upheld the applicability in Puerto Rico of federal acts which did not include such an expression and which, like the FDPA, contradict the local constitution (such as those which permit wiretapping, also prohibited by the ELA Constitution), he nevertheless argues that this case is different.

It is different precisely because of the "unique and extreme" nature of the death penalty - a matter of life and death for the defendants and of profound political and moral implications for the whole community, a matter, therefore, on which a much higher degree of precision in all decisions and determinations can and should be demanded.

Since the ELA Constitution forbids the death penalty, since the Constitution was reviewed by Congress, which could have, but did not modify that provision (as it did with other passages, such as the one recognizing employment as a fundamental right), since the Constitution was presented to the people of Puerto Rico as part of a "compact", and last, but most importantly, given the extreme nature of capital punishment, it must be concluded that, had Congress wished to extend the FDPA to the island it would have not left such a momentous question to "mere inference" or interpretation, it would have done so explicitly.

Since it did not, Casellas argued that it cannot be concluded that Congress wished to extend the FDPA to Puerto Rico. It is therefore inapplicable in Puerto Rico.

But what if Congress did intend to extend the FDPA to Puerto Rico (or explicitly did so in the future)? The second argument deployed by Casellas addressed this question. His conclusion was that, even then, the death penalty would be inapplicable in Puerto Rico. His argument can be briefly summarized: the ELA was created in 1952 both as a "compact" and in accordance with the principle of "government by consent".

## Two processes

Nevertheless, since 1952, two processes have progressively "eroded" this principle in Puerto Rico. On the one hand, federal initiatives, particularly since the 1960s, have shrunk the areas where the local government has or, may have, real authority. However as opposed to the States that have undergone a similar process, the ELA does not have representation in Congress.

At the same time, Congress has repeatedly blocked all attempts to enhance the powers of the ELA or to facilitate a transition to statehood or independence. Deprived of the possibility of opting for another status, or of extending the powers of the existing one, Puerto Ricans are thus being subjected to an increasing series of federal initiatives in whose elaboration they have no representation.

This "gradual erosion during the last forty eight years of the principle of government by consent" is, according to Casellas, serious enough already. The extension of the FDPA to the island would be yet another, major, step in the same direction. Thus, loyalty and respect for the principle of "government by consent" would dictate declaring the FDPA inapplicable in Puerto Rico.

It cannot be said, as I pointed out, that Casellas aimed low. According to his decision, extending the FDPA to Puerto Rico would imply a departure if not a betrayal, not only of the alleged "compact" of 1950-52 but also of the basic democratic principles on which the Federal system and Constitution claim to stand.

Evidently Judge Casellas' decision did not come out of a void. It was of course related to his desire to defend the ELA, which he supports, against further encroachments, as well as his probable personal opposition to the death penalty. But it cannot be divorced from the fact that the leaders of all the three electoral parties in Puerto Rico, the Puerto Rico Bar and other professional associations, a significant number of religious leaders, as well as the smaller but visible left organizations have taken a stand against the death penalty.

The few public officials (such as former Police head Pedro Toledo) that, at one time or another, have made statements in favour of the death penalty have found little or no support. The growing threat of convictions under the FDPA also spurred the creation of Ciudadanos Contra la Pena de Muerte, a coordinating committee that has led an effective and unceasing effort (through vigils, press conferences, media appearances) to keep the issue in the public eye.

Needless to say, Casellas' arguments were not the end of the matter: on June 5, 2001 the First Circuit Court of Appeals in Boston struck down his decision, rejecting his two main arguments. The decision is brief and blunt. According to it, the applicability or inapplicability of federal acts to Puerto Rico is strictly a matter of Congressional intent.

Any law not explicitly made inapplicable by Congress is applicable in Puerto Rico. The limits and rules set by the ELA Constitution only apply to local courts and authorities. Granting the people of Puerto Rico the opportunity of adopting it did not imply that federal penalties would not apply to federal crimes in Puerto Rico.

According to the decision, what is being criticized here (extension of federal acts to Puerto Rico even if they contradict the local constitution) has been done before. To denounce it now, according to the Court, is to present a "political" and not a "legal" argument.

## Unclear

It is not yet clear whether the case will be appealed to the Supreme Court or whether the latter will agree to review it. The decision as it stands will allow for interesting debates on both issues involved (capital punishment and the status question).

Opponents of the death penalty will be working on several areas: educating the public on the evils of the death penalty, carrying out activities in opposition to capital punishment, extending the public opposition to the death penalty to a wider number of professional, trade union and social organizations.

Judges, prosecutors and jurors must be made aware that Puerto Rico opposes the death penalty even if Congress, via Puerto Rico's colonial subordination, allows them to impose it.

Internationally, the opponents of both the death penalty and of colonialism should denounce how the US is trying to impose that destructive practice on a people that have clearly and repeatedly rejected it. Socialists have and will continue to participate in all these efforts.

In this process two fine but important distinctions should be made: while not defending the ELA, we do defend any and all the democratic rights recognized in its Constitution - in many ways it is a more advanced document than the US Constitution.

While struggling for independence we do not oppose federal legislation that may improve our lives under US rule (a complex problem, for sure, which requires a flexible analysis of each concrete problem).

In this case, we should point out that the Court of Appeals was right in describing Casellas' argument as "political" and that Casellas was right in raising a "political" argument: the problem (colonialism and the right of people to live under laws of their own making) is political. Furthermore, the Court is reiterating something the left has pointed out many times: that there is no such "compact" between Puerto Rico and the US, that colonialism is inherently undemocratic and that it can only be legalized at the cost of separating the law from the democratic principles on which it supposedly rests. [7]

## Struggle

The Court's decision now forces us to redouble our struggle against the death penalty in Puerto Rico. Many in Puerto Rico rightfully feel proud of the positive aspects of the ELA Constitution.

As socialists, we should also see the struggle against capital punishment as an opportunity to bring them a step, or two, closer to the understanding that, in the final analysis, those admirable provisions can only be guaranteed through our constant mobilization and, indeed, through a "compact", not with Congress, but with the working and oppressed peoples of North America: a "compact" in the struggle to transform both our colonial structures and their archaic and undemocratic political institutions into participatory democracies, truly governed by their peoples, and thus able to freely collaborate with each other on an equal footing.

*The writer thanks Rubie Alicea and Ruth Arroyo for their help in gathering information for this article.*

---

[1] Their photos may be seen in Moises Echevarría, La pena de muerte, La Tribuna, Ponce, 1938.

[2] For early arguments against capital punishment see: Rafael Lopez Landron, Apuntes sobre la pena de muerte, Madrid, 1885; Manuel Corchado, La pena de muerte, Imprenta "El Criollo", Aguadilla, 1903; Edelmiro Huertas, Porcin de argumentos contra la pena de muerte, Tipografía Fenix, Coamo, 1911.

[3] Matienzo is a fascinating figure, an enlightened democrat who, disillusioned with the results of U.S. rule he had initially supported, progressively became a proponent of independence. On this current see: Rafael Bernabe, Respuestas al colonialismo en la política puertorriquena, R'o Piedras, Huracan, 1996; Nancy Herzog, El Iris de paz, Huracán, R'o Piedras, 2001.

[4] Luis Muñoz Marín, Memorias, Universidad Interamericana, San Juan, 1982.

[5] Echevarría wrote the book quoted above as a response to Winship. The latter's proposal was opposed by the Socialist and Liberal parties, and supported by some Republican legislators.

[6] The case in question is United States of America v. Hector Acosta Martinez, Joel Rivera Alejandro.

[7] This debate goes back to the Insular Cases of 1900, an interesting chapter in the rise of US imperialism that we cannot go into here.