

2002

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Recommended Citation

Manuel Rodriguez Orellana, *Vieques: The Past, Present, and Future of the Puerto Rico-U.S. Colonial Relationship*, 13 LA RAZA L.J. 425 (2015).

Available at: <http://scholarship.law.berkeley.edu/blrlj/vol13/iss2/9>

Link to publisher version (DOI)

<http://dx.doi.org/https://doi.org/10.15779/Z38W089>

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Vieques: The Past, Present, and Future of the Puerto Rico-U.S. Colonial Relationship[†]

Manuel Rodríguez Orellana[‡]

I wish to thank you for the honor of accepting my designation to participate on behalf of the President of the Puerto Rican Independence Party (PIP) and Honorary President of the Socialist International, Rubén Berríos Martínez, as keynote speaker, here in Portland, Oregon, at the *Seventh Annual LatCrit Conference on Coalitional Theory and Praxis: Social Justice Movements and LatCrit Community*.

Professor Berríos could not be here today because of his obligations with the Socialist International, the worldwide association of social-democratic parties that have seen their democratic traditions and progressive values recently threatened throughout the European Union by the extreme right.¹ He has asked me to extend his best wishes for a successful conference and to congratulate you for the courage you have shown in choosing to address, through this invitation, the blatant abuse of a people still subject to colonial rule. Puerto Rico's struggle against U.S. colonialism continues to this day, and the struggle for peace in Vieques, an island-municipality of Puerto Rico under the U.S. Navy's direct control for the past 60 years, is a metaphor for our people's quest for decolonization and democracy.

I make no pretenses of impartiality—an elusive and humanly meaningless concept where normative issues are involved. Therefore, I will share with you *my* side of the story as part of the moral obligation that, as jurists, I believe we must share. I hold these views, not just as a law teacher who has explored the hidden meaning behind the constitutional and statutory rhetoric used to attempt to disguise my country's unnatural subordination to the United States, but also as a participant

[†] This is the full text of the keynote address at the LatCrit Conference VII in Portland, Oregon, May 3, 2002.

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1. One need only list the next day's reaction throughout Europe to socialist Prime Minister Lionel Jospin's defeat in the first round of the French elections of April 21, 2002. Prior to the run-off, most international observers had positively assessed Jospin's chances of ousting Gaullist incumbent Jacques Chirac. However, Jospin was edged out by right-wing extremist Jean Le Pen. See Bruno Odent, *Un phénomène européen: Après l'Autriche, l'Italie, le Danemark, la France*, L'HUMANITÉ, Apr. 22, 2002, at www.humanite.presse.fr. See also PP, PSOE e IU muestran su preocupación por el voto 'racista y antieuropeo' de Le Pen, EL PAÍS, Apr. 22, 2002, at www.elpais.es; *Analyse: Un inquiétant séisme politique*, LE MONDE, Apr. 22, 2002, at www.lemonde.fr; *Vanno al ballottaggio il Capo dello Stato uscente Jacques Chirac e il candidato dell'estrema destra Jean-Marie Le Pen*, L'OSSERVATORE ROMANO, Apr. 22-23, 2002, at www.vatican.va/new_services/or; *Socialisti e comunisti voteranno per Chirac. Le Pen vuol uscire da Maastricht*, L'UNITÀ, Apr. 22, 2002, at www.unita.it; Alan Sage, *After 15 Years, Le Pen Threat Becomes Reality*, THE TIMES OF LONDON, Apr. 22, 2002, at 5.

in the story. It is about an ongoing struggle that needs to be told now, even though my telling it here, today, involves the possibility that by the time of publication, the story may need to be updated. By then, important developments may—or may not—already have taken place. For instance, a White House Task Force may have initiated its work regarding the U.S. government's views on realistic status choices.² Or the governor of Puerto Rico may have initiated a meaningful dialogue with representatives of all political status options, to convene a special election for a People's Assembly on Status.³ Or the U.S. Navy could announce (finally!) its intention to transfer its military maneuvers from Vieques to other sites. As Puerto Rican political analyst and former National Security Advisor Juan M. García Passalacqua has observed, "With the Navy out, national affirmation has a future."⁴

Regardless of how events unfold, it is a story that has not been told sufficiently in the United States and needs to be repeated as often as necessary—in legal publications, professional forums, and classrooms—to enlist the support of American intellectuals.⁵

I.

The domination of human beings, on behalf of the interests or the agenda of others more powerful, raises moral questions such as those settled in the United States with the abolition of slavery, or in South Africa with the termination of apartheid. In international legal terms: "The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation."⁶

2. "The White House believes that 'Puerto Rico should be allowed to choose its own destiny and to reach a permanent status. The task force will be looking into that issue' of whether commonwealth is considered a permanent status . . ." Robert Friedman, *PDP Holds on to Hope for Enhancing Rights Within Commonwealth*, THE SAN JUAN STAR, May 13, 2002, at 4-6.

3. "Commonwealth forces insist the most important first step is for all factions on the island to reach what some say is unreachable—consensus on the 'mechanism' or 'process' on how status should be approached." *Id.*

4. See Juan M. García Passalacqua, *New Events Make Status Issue an Imperative*, THE SAN JUAN STAR, May 12, 2002, at 62.

5. One of the organizers of this forum has made an important contribution to scholarly literature on this subject. See Pedro A. Malavet, *Puerto Rico: Cultural Nation, American Colony*, 6 MICH. J. RACE & L. 1 (2000). On Puerto Rico's right to decolonization and independence see also Rubén Berrios Martínez, *Independence for Puerto Rico: The Only Solution*, 55 FOREIGN AFF. 561 (1977); Manuel Rodríguez Orellana, *In Contemplation of Micronesia: The Prospects for the Decolonization of Puerto Rico Under International Law*, 18 U. MIAMI INTER-AM. L. REV. 457 (1987).

6. *Declaration on the Granting of Independence to Colonial Countries and Peoples*, G.A. Res. 1514, 15 U.N. GAOR Supp. (No. 16) at para. 1, U.N. Doc. A/15/Supp. 16 (1960), complemented in certain of its aspects by G.A. Res. 1541, 15 U.N. GAOR Supp. (No. 16), U.N. Doc. A/15/Supp. 16 (1960). See also *Western Sahara*, 1975 I.C.J. 12 (Advisory Opinion); International Covenant on Civil and Political Rights, art. 1, which states, in part, that "[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." G.A. Res. 2200, U.N. Doc. A/6316/Annex (1966) (entered into force in 1976); International Covenant on Economic, Social and Cultural Rights, which contains identical language in art. 1, Dec. 16, 1966, G.A. Res. 2200 & (XXI), Annex (entered into force in 1976); Conference on Security and Cooperation in Europe, Final Act (Helsinki), Aug. 1, 1975, art. 1, princ. VIII, Dep't. St. Bulletin, Aug. 1975, at 81, which states that "all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status." Moreover, international legal scholarship has come to regard self-determination as part of the *jus cogens*, a fundamental human right that admits of

In 1868, when Puerto Rico was a colony of Spain and international law doctrine on decolonization had not yet caught up with morality, an uprising took place in the town of Lares. The insurrection demanded economic and political freedom and brought about the proclamation of a short-lived republic, a milestone in the history of Puerto Rico. The Lares uprising, together with the Yara uprising in Cuba that same year, forced the metropolitan power to reexamine its relationship with its Caribbean colonies. In Puerto Rico, this reevaluation led to the abolition of slavery in 1873 and to greater concessions regarding foreign trade and local autonomy. Lares thus marked the beginning of the struggle of the Puerto Rican people against foreign subjugation, domination, and exploitation. Most importantly, it was a clear expression of the awareness that, after nearly 400 years since the Spanish Conquest, Puerto Ricans had evolved into a different nationality: a Spanish-speaking, but Latin American and Caribbean, Puerto Rico.

The United States war of 1898 with Spain drastically altered the course of history before Puerto Rico could reach its natural destiny as a sovereign nation of the Western Hemisphere. The purpose of the U.S. invasion and acquisition of Puerto Rico at the time was, as professor Berríos has written, strategic and military:

[C]ontrol of Puerto Rico was basic to the extension of U.S. influence over Latin America in general and the Caribbean in particular. The invasion and acquisition of Puerto Rico, which guarded the eastern approaches of the Caribbean Sea, was inextricably tied to the decision to build a canal connecting the Atlantic and Pacific Oceans.⁷

The objectives may have varied since then, but the strategic and military purpose of retaining Puerto Rico as an overseas possession subject to the Territory Clause of the U.S. Constitution remains.⁸

Despite the wave of decolonization that characterized the period immediately following World War II,⁹ congressional legislation regarding Puerto Rico—a half century after the invasion—did not alter Puerto Rico's political and economic subordination to the United States. The congressional report on the bill that was subsequently enacted into federal law, which established the so-called commonwealth, illustrates this point. It stated, in relevant part, that:

The bill under consideration would not change Puerto Rico's fundamental political, social and economic relationship to the United States . . . [and the] sections of the [previously existing] organic act which [would be repealed] are the provisions of the act concerned primarily with the organization of the local executive,

no derogation. See Manuel Rodríguez Orellana, *Human Rights Talk . . . and Self-Determination, Too!*, 73 NOTRE DAME L. REV. 1391 (1998).

7. Rubén Berríos Martínez, *Puerto Rico's Decolonization*, 76 FOREIGN AFF. 100, 103 (1997). On U.S. expansionist policies toward Latin America see LARS SCHOUZL, *BENEATH THE UNITED STATES: A HISTORY OF U.S. POLICY TOWARD LATIN AMERICA* (1998).

8. U.S. CONST. art. IV, cl. 3. See *Harris v. Rosario*, 446 U.S. 651 (1980).

9. See C. Fred Bergsten, *Interdependence and the Reform of International Institutions*, 30 INT'L ORG. 361 (1976). See also Manuel Rodríguez Orellana, *The Decolonization of Puerto Rico in Light of International Legal Precedents: A Case for Post-Independence Advocacy*, 5 B.C. THIRD WORLD L.J. 45 (1984).

legislative, and judicial branches of the government of Puerto Rico and other matters of purely local concern.¹⁰

The commonwealth arrangement implemented by federal legislation in 1952 was consistent with a 1945 memorandum of the U.S. War Department that became public in 2001. The memorandum exposes the War Department's opposition to any new status arrangement that provided for Puerto Rico's sovereignty. Moreover, the War Department insisted on exclusive privileges for U.S. Armed Forces in perpetuity, in an unrestricted, preferential manner over all public utilities, as well as all air, water, and land transportation facilities. It further insisted that a federal court continue to exist to protect American military installations and personnel.¹¹

The international configuration of forces that dominated the world stage in the years following World War II continued to make Puerto Rico's struggle for decolonization extremely difficult. The government's practice of keeping dossiers on persons "suspected" of subversion by virtue of their political association with pro-independence and decolonization activities is now well documented. Political persecution and employment discrimination of pro-independence advocates was the established practice well into the 1980s. It was exposed and denounced by the PIP in 1986.¹² After extensive litigation, the practice was officially proscribed, but unofficial political discrimination continues as a fact of life.¹³ Furthermore, the federal government was an active and dominant participant in political persecution against Puerto Rico's real "freedom fighters" throughout the twentieth century.

U.S. hegemony during the Cold War ensured that no major embarrassment to the leader of one of the two major camps would take place. Consequently, the United States could get away with its colonial possessions, particularly at meetings of the United Nations.¹⁴ Surely colonialism, legally proscribed by international law since 1960, was wrong. However, in the case of Puerto Rico, strategic security in the context of the Cold War provided a convenient rationalization for the leader of the "free world" to forgive itself of its colonial "indiscretions" and to assertively persuade world opinion to look the other way. This was particularly so if the colonial subjects were "well-fed," and human rights abuses were handled swiftly and

10. PUERTO RICO-CONSTITUTIONAL GOVERNMENT-ORGANIZATION, 2 U.S. CONG. AND ADMIN. SERVICE 2682-3 (1950).

11. Juan M. García Passalacqua, *Mi testimonio del secreto del ELA*, EL VOCERO, Aug. 28, 2001, at 37, summarizes and quotes the essential aspects from the text of this memorandum. The memorandum (photocopy available in the author's files) was contemporaneously reproduced on the internet at www.destape.org, but is no longer posted. The U.S. Navy never denied the memorandum's authenticity.

12. See *Noriega Rodríguez v. Hernández Colón*, 122 D.P.R. 650 (1988) and 130 D.P.R. 919 (1992).

13. The alleged instances are too numerous to relate. Oftentimes cases go unreported because victims of political discrimination, particularly in the independence movement, prefer not to turn it into a public issue that will make it more difficult for them to find employment elsewhere. From experience, I know this is not purely theoretical. When I returned to Puerto Rico on leave from my teaching job at Northeastern University School of Law and became actively involved in pro-independence politics in 1989, my wife, a former Assistant Attorney General in Massachusetts who was hired on the strength of her academic and professional qualifications, was told that she no longer enjoyed the trust of her superiors as in-house counsel for the Puerto Rican government television and radio station, WIPR. The CEO angrily and unabashedly told her that he had found out only a couple of days earlier that she was married to the Puerto Rican Independence Party's Electoral Commissioner. Thereafter, she was relegated to a desk job without legal tasks, until she subsequently secured employment elsewhere.

14. See THOMAS M. FRANCK, *NATION AGAINST NATION* 195-204 (1985).

forcefully by local authorities posturing as contented colonials and U.S. authorities posturing as benevolent masters.¹⁵ The apologists of the commonwealth often attempt to disguise its subordinate nature with a euphemistic description: "the maximum of autonomy compatible with the federal system."

In 2000, the involvement of federal agencies interfering directly, or indirectly through local government authorities, with persons, groups, or organizations that favored Puerto Rico's sovereignty and decolonization became the subject of an investigation by the Senate of Puerto Rico's Committee on Government and Federal Affairs. A resolution submitted by the PIP initiated the investigation.¹⁶ In the course of the investigation, and with the valuable assistance of Congressman José E. Serrano (D-N.Y.), the F.B.I. admitted to these practices and began to make available to the Senate Committee more than one million declassified pages of federal dossiers, dating as far back as the 1930s. The documents analyzed by the Committee evidenced federal monitoring, intervention, infiltration, and persecution of persons, such as Nationalist Party leader Pedro Albizu Campos, and student organizations such as the Federation of University Students (FUPI). Legitimate political parties also were targeted, including the PIP and Socialist Parties (PSP). The FBI, the Secretary of the Interior, the Army, the Air Force, and the Navy, acting in conjunction with Puerto Rican authorities, most notably the governor and the police, carried out these interference endeavors.¹⁷ The committee reports concluded that federal involvement with Puerto Rican authorities in the persecution of those advocating Puerto Rico's decolonization de facto criminalized constitutionally protected speech and political activity, thereby impeding the free exercise of Puerto Rico's legal right to self-determination.¹⁸

II.

By the end of the first century of U.S. colonial rule over Puerto Rico, in harmony with the design of the War Department's memorandum of 1945,¹⁹ the U.S. Navy occupied and used over two-thirds of Vieques for military maneuvers and installations. The economic, sociological, and environmental harm perpetrated upon Vieques and its inhabitants during that period is now a matter of common knowledge in Puerto Rico, and extensively documented in the June 1999 consensus report of a commission of representatives of Puerto Rico's political parties, civic, labor, and

15. The largest funding for the island continues to be food aid, at \$1.293 billion in fiscal year 2001. Robert Friedman, *Puerto Rico Received \$13.1 Billion in Fiscal 2001*, THE SAN JUAN STAR, Apr. 23, 2002, at 5. However, more than half of the outlays for the island—\$7.7 billion—came in direct payments to individuals who contributed funds or time in service, such as Social Security, veterans payments, and federal retirement pensions. *Id.* On the dependence model established for Puerto Rico, see EDWIN IRIZARRY MORA, *ECONOMÍA DE PUERTO RICO: EVOLUCIÓN Y PERSPECTIVAS* (2001); RICHARD WEISKOFF, *FACTORIES AND FOODSTAMPS: THE PUERTO RICO MODEL OF DEVELOPMENT* (1985).

On overt persecution and discrimination of nationalists and independence supporters following the 1950 Nationalist uprising in Jayuya, Puerto Rico, see IVONNE ACOSTA, *LA MORDAZA* (1987). For a firsthand account of the abuses against some of those arrested in Jayuya, see HERIBERTO MARÍN, *ERAN ELLOS* (2000). See also Manuel Moraza Choisne, *Some Examples of State Terrorism Against Its Own Citizens: Puerto Rico 1937, 1948-57* (1989) (unpublished paper, Harvard University) (copy in author's files).

16. S.R. 3063, approved Mar. 14, 2000.

17. *Report of the Committee on Government and Federal Affairs with Additional Report Submitted by the Puerto Rican Independence Party Delegation*, Puerto Rico Senate, Dec. 28, 2000.

18. *Id.*

19. *Supra* note 11.

religious organizations appointed by the governor.²⁰ Since then, until late in the year 2000, when the Puerto Rico Senate approved the above-mentioned committee report, things were coming to a head.

In May 1999, Rubén Berríos staged a peaceful protest of the Navy's lethal indiscretion by taking over the target range in Vieques. He lived there, in a tent, without electricity or running water, until May 2000, when he and hundreds of other Puerto Rican professional, civic, labor, and religious leaders were forcibly removed by federal military and police authorities. He penetrated the restricted areas a second time and, consequently, faced federal prosecution. However, in reluctant recognition of the moral strength of his non-violent leadership and his international stature as Honorary President of the Socialist International in an election year when he became a candidate for governor, the U.S. District Court in Puerto Rico ordered a nominal sentence.²¹ Once the elections were over, however, the U.S. District Court in Puerto Rico put aside any pretenses of magnanimity toward Berríos and sentenced him to four months in federal prison after another incursion into restricted Navy lands the following year.

By the summer of the year 2000, Berríos and thousands of Puerto Ricans from all parties, ideologies, and creeds served as human shields, stopping combat practice on Vieques for more than a year. This forced suppression of amphibious landings, air-to-ground, and ship-to-shore military maneuvers in Vieques made the contention that Vieques's occupation was indispensable to U.S. national security sound hollow. The PIP's civil disobedience camp was continuously inhabited by Berríos despite two tropical hurricanes and a painful bout with diverticulitis. Berríos occupied the target range for 361 days, during which all military activity in Vieques came to a complete halt. The resumption of the Vieques maneuvers in August 2000 was perceived as nothing but a blatant ostentation of the arrogance of power.

In addition to these disingenuous claims, the Navy also contended that it was protecting the environment and public health. Nevertheless, in the course of the year in which civil disobedience camps reclaimed Vieques, dangerous levels of depleted uranium, napalm, heavy metals, toxic substances, and carcinogens were found in the devastated landscape. These substances filter into the food chain and cause irreparable harm to delicate ecological balances.²² Furthermore, a disproportionately high cancer rate has continued to claim new victims in Vieques.²³

20. Comisión especial de Vieques, *Informe al Gobernador de Puerto Rico* (1999). This commission was convened after a Puerto Rican civilian worker was killed, and four others seriously wounded, by an off-target 500-pound bomb dropped from a military plane on Vieques's main observation post in April 1999.

21. It should be noted that the U.S. District Court in Puerto Rico has not felt compelled to rationality or consistency in sentencing other participants in civil disobedience in Vieques. During the ensuing months of July to September of 2000, more than 130 Puerto Rican Independence Party members were prosecuted and imprisoned for terms varying from one week to two months, without trial, for trespass—a misdemeanor classified as a petty offense under federal law. 18 U.S.C. § 1382. Among them were the PIP's principal leaders, including its vice president and national candidate for the Senate, Fernando Martín, and other legislative and local candidates, such as the candidates for mayor of Puerto Rico's major metropolitan areas—San Juan, Mayagüez, Ponce, Bayamón, Carolina, and Caguas. In August 2000, this writer, then a senator and candidate for Puerto Rico's Resident Commissioner post in Washington (the only federal elective position in Puerto Rico), was imprisoned without a trial for six weeks in the federal Metropolitan Detention Center in Puerto Rico, and then sentenced to "time served."

22. The tests were conducted by experts led by Puerto Rican Independence Party environmentalist Jorge Fernández-Porto, using the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) guidelines for control protocols and quality guarantees for the collection, transportation, and analysis of soil, air, and water samples, specifically *Region II CERCLA*

Throughout 2000, Puerto Rico's three political parties,²⁴ civic and labor organizations, and religious leaders of all denominations massively demonstrated against the Navy's practices in Vieques and denounced them as immoral.

As Latin American analyst and reporter for *Univisión* Jorge Ramos Avalo wrote:

Vieques had effectively awakened the *puertorriqueñidad* [Puerto Rican identity] in millions and created a clear consciousness of the fact that the interests of Puerto Ricans were different from those of North Americans. In other words, Vieques had fractured the notion held by *statehooders* [federated statehood advocates] that Puerto Ricans and North Americans could be part of the same people . . . Puerto Rico had begun to think of itself without the United States.²⁵

At the end of the twentieth century, Vieques became, like Lares in the late nineteenth century, another historical marker. Puerto Rico had retained and strengthened its sense of distinct identity as a Spanish-speaking nation of the Caribbean,²⁶ and peaceful civil disobedience had become our moral weapon against the Navy's abuses in Vieques. The necessity for the immediate and permanent cessation of all military activity and for the devolution of lands held by the Navy in Vieques even became public policy of the government of Puerto Rico.²⁷ This idea was correctly understood internationally as symbolizing the Puerto Rican people's cause for self-determination.²⁸

Puerto Rico's struggle for decolonization, and the United States' human rights abuses and the ecological abomination of the island, quickly reached the desk

Quality Assurance Manual, and compared with the federal Environmental Protection Agency's security guidelines. The findings submitted by the PIP were incorporated into the report of the 1999 multi-sector commission on Vieques appointed by Puerto Rico's governor. See *supra* note 20.

23. Coincidentally, a few days after his forced removal from the target area, Berrios successfully underwent surgery for a cancer condition developed during the year that he inhabited this contaminated zone.

24. Under Puerto Rico's Electoral Law, the three principal political parties are the Popular Democratic Party (pro-commonwealth), the New Progressive Party (pro-statehood), and the Puerto Rican Independence Party.

25. Jorge Ramos Avalo, *Vieques invadida*, in *A LA CAZA DEL LEÓN* 191-98, 198 (2001). See also Rubén Berrios: *361 días de independencia*, *id.*, at 199-210.

26. See Rubén Berrios Martínez, *Un conflicto de nacionalidades*, in *NACIONALIDAD Y PLEBISCITO* 113-31 (1991). Any visitor may perceive this sociological reality without great effort, even among the majority that still do not favor Puerto Rico's independence. See NANCY MORRIS, *PUERTO RICO: CULTURE, POLITICS AND IDENTITY* (1995) and *Nacionalidad y ciudadanía: Lealtades divididas*, regarding a recent poll that shows that only 20% of Puerto Ricans in 2002 consider the United States their nation, as compared with 60% who believe Puerto Rico is their nation. Although a substantial majority still believes U.S. citizenship—the only citizenship available to Puerto Ricans who live in Puerto Rico—is important, even this number has decreased from 75% in 1996 to 63% in 2002. Moreover, less than one-half of Puerto Ricans, 47%, preferred U.S. citizenship in May 2002, as compared to 51% who preferred an arrangement in which Puerto Rican citizenship would be recognized, either alone or in dual citizenship. *EL NUEVO DÍA*, May 2, 2002, at 4-5. See also Juan M. García Passalacqua, *New Events*, *supra* note 4; Pedro A. Malavet, *Puerto Rico: Cultural Nation*, *supra* note 5.

27. Comisión especial de Vieques, *supra* note 20.

28. See Congreso General de la Internacional Socialista, *Declaración de la Internacional Socialista sobre Puerto Rico y la Isla de Vieques*, Paris, France: Nov., 1999, in PABLO MARCIAL ORTIZ, *CON RUBÉN EN LA PLAYA: UN DIARIO DE VIEQUES* 253-54 (2000).

of the American president. In a letter to President Clinton, hand-delivered through a mutual friend, Berríos wrote from the Navy's firing range in Vieques:

Here, next to the idyllic beach from where I write to you, lies a lunar wasteland of unexploded ordnance and depleted uranium-tipped radioactive shells littered about in dead wetlands and lagoons, scorched earth, and devastated marine turtle nests.

...

Vieques presents you with a choice. To disregard the will of the Puerto Rican people, expressed beyond political, religious, or ideological differences, would set back the clock of democracy in the U.S., compounding colonialism with an overt act of tyranny. To comply with the will of the Puerto Rican people, however, will make the spiritual prison walls of colonial impotence in Puerto Rico begin to crumble.²⁹

In the two years following Berríos's July 1999 letter, Vieques's plights and Puerto Rico's colonial status caught the attention of the president of the United States and the American public in a very peculiar way. In the letter's margin, Clinton jotted in his handwriting, "This is wrong."³⁰ Approximately a year later, Berríos and Puerto Rico's two other gubernatorial candidates, who had separately visited Berríos's Vieques camp in solidarity with Puerto Rico's demand for an end to the Navy's practices, were invited to the White House to meet with the president of the United States and his advisors.³¹

Yet, several weeks after this meeting, it remained unclear whether or not Clinton was willing to bring military activities to an immediate halt. He set up a muddled legislative scheme suggesting a referendum in Vieques,³² which did not provide for what official public policy and the people of Puerto Rico wanted: the immediate and permanent cessation of all military activity on the island-municipality, the return of occupied lands to Puerto Rico, and the cleanup and rehabilitation of Vieques's ecologically distressed environment. At best, it would have provided for the president of the United States to conduct a referendum, to be held at the Navy's convenience, on the termination of live-fire training, or its continuation after May 1, 2003. Additionally, no provision was made for the immediate cessation of all military activity, the devolution of lands to the people of Puerto Rico, or to clean up the environment.

On status, the Clinton administration set up an erstwhile task force, presumably now under the aegis of the Bush administration, to clarify status options

29. Rubén Berríos Martínez, *Letter to President William Jefferson Clinton* (July 21, 1999) (copy in author's files).

30. See Francis X. Clines, *Protest Leader in Puerto Rico Basks in Gains*, N.Y. TIMES, Dec. 5, 1999, at A1.

31. Leonor Mulero, *Hora de la verdad en Casa Blanca*, EL NUEVO DÍA, June 28, 2000, at 32; Mildred Rivera Marrero, *[Berríos] Atribuye a Vieques la reunión*, EL NUEVO DÍA, June 30, 2000, at 32; Robert Friedman, *U.S. Will Move to Clarify Status Options*, THE SAN JUAN STAR, June 29, 2000, at 5.

32. Floyd D. Spence National Defense Authorization Act for 2001, P.L. 106-398, Sec. 1503.

for Puerto Rico from the U.S. perspective.³³ But aside from appointing the new administration's members, the task force has remained like an empty kettle on a cold stove.

III.

The unnatural results of the 2000 election in the United States froze developments on Vieques in the peculiar position the Clinton administration had left them. On June 14, 2001, President Bush announced during a press conference in Sweden that the United States would discontinue military exercises in Vieques in May 2003. "My attitude is that the Navy ought to find somewhere else to conduct its exercises, for a lot of reasons . . . One, there's been some harm done to people in the past. Secondly, these [Puerto Ricans] are our friends and neighbors and they don't want us there."³⁴

However, the Bush administration simultaneously supported new legislation³⁵ that repealed the Clinton referendum provisions regarding the continuation of military training on the island of Vieques. Evidently, a referendum that would have allowed a "local community" under the U.S. flag to decide on any aspect of U.S. military presence was a potentially dangerous precedent from the perspective of the U.S. Navy, regardless of the outcome.³⁶

Through the last months of Clinton's presidency and the first few months of the Bush administration, Vieques also caught the imagination of American public-opinion makers. After Berrios penetrated restricted Navy land in Vieques a third time, the Navy successfully sought a harsh four-month prison sentence for Berrios's misdemeanor.³⁷ Yet, mounting acts of civil disobedience by Puerto Rican political leaders of all political parties and ideologies ensued. Additionally, prominent American figures, such as Congressman Luis V. Gutiérrez (D-Ill.), New York labor leader Dennis Rivera, Hollywood actor Edward James Olmos, the Reverend Al Sharpton, Jacqueline Jackson, the wife of Reverend Jesse Jackson, and environmentalist Robert F. Kennedy, Jr., all served disproportionate sentences for the petty offense of trespassing on federally restricted land in Vieques.³⁸

Since Lares in 1868, only Vieques has managed to bring Puerto Rico's morally untenable status as a colony to the attention of the metropolitan power and

33. Exec. Order, "Establishment of the President's Task Force on Puerto Rico's Status," Dec. 23, 2000 (copy in author's files).

34. Quoted by Raymond Hernandez, *Both Sides Attack Bush Plan to Halt Bombing on Vieques*, N.Y. TIMES, June 15, 2001, at A1-A32.

35. P.L. 107-107, Sec. 1049.

36. "I do worry about the effect of being forced to leave Vieques, not only on our domestic training ranges but on international access." Gen. James Jones, commandant of the Marine Corps, *Marine Commandant Speaks on Vieques*, AP, Aug. 24, 2001.

37. See Rubén Berrios Martínez, *Puerto Rico se arrodilla solamente ante Dios*, EL NUEVO DÍA, May 17, 2001; see also *Bar Association President Criticizes Threat of Sanctions Against Lawyer*, SAN JUAN STAR, May 29, 2001 (regarding a widely publicized criminal contempt complaint allegedly filed against this writer, who appeared as Berrios's counsel of record, by the federal magistrate that condemned Berrios. The purported nature of the criminal contempt was to state for the record that the sentences handed down by the court constituted "political judgments." No official notification was served and no further action has been taken since that blatant attempt to intimidate other members of the Puerto Rico federal bar).

38. Eileen McNamara, *Sharpton Gets 90 Days in Jail for Navy Protest*, THE WASHINGTON POST, May 24, 2001, at A40; *Puerto Ricans Protest Stiff Vieques Jail Terms*, REUTERS, May 28, 2001.

society. The events of September 11, however, shifted public attention away from Vieques, on both the mainland and the island.

IV.

The 2000 election also brought to power a new administration in Puerto Rico. During the gubernatorial campaign, candidate Sila Calderón embraced the two main issues that Rubén Berríos placed on the public agenda: Vieques and Puerto Rico's political status.

Berríos's courageous stance of civil disobedience against the U.S. Navy, both in the island-municipality of Culebra in 1971 and subsequently in Vieques, caused him to become the personification of the Puerto Rican struggle against the Navy's abuses. He campaigned vigorously for the immediate cessation of all military activity in Vieques and he proposed a People's Constituent Assembly on Status with proportional representation for all options. The Constituent Assembly would attempt to agree, by majority if not by consensus, on a demand for a final status solution to which the U.S. government would have to respond.³⁹

Candidate Calderón, an avowed faithful of Puerto Rico's 1952 commonwealth as the final status solution, nevertheless raised great expectations by pledging that, if elected, she would end the bombing in Vieques in two months. Also, Calderón characterized Berríos's idea of a People's Constituent Assembly on Status as an "excellent idea." She further promised to appoint a broadly representative commission to discuss status. As a result of an extremely well-financed effort in the last two weeks of the gubernatorial campaign, her newly adopted rhetoric as a "born again nationalist" and her promises to quickly solve the Vieques problem were effective in activating the "third party syndrome" and reversing the support that had been shifting in the direction of Berríos's candidacy.⁴⁰

As governor, however, she soon realized that the struggle for Vieques would take her on a collision course with the status quo. Instead of confronting the U.S. government with the democratic will of Puerto Ricans, she remained silent for several months on both Vieques and Puerto Rico's status. Despite a landslide victory in a municipal referendum overwhelmingly supporting permanent and immediate cessation of all military activity, Calderón failed to represent the will of her constituents.⁴¹

However, as the bungling and half-hearted efforts of the new administration increasingly brought governor Calderón's credibility into question, she obtained

39. Various methods to solve the status question had been attempted by Puerto Ricans since the inception of the commonwealth arrangement in 1952, notwithstanding the impediments to self-determination that the U.S. government placed along the way (see *supra* notes 11-14 and accompanying text). In addition to local referenda in 1993 and in 1998, which proved inconclusive, attempts in 1989-1991 and in 1996-1998 to negotiate with the U.S. Congress for legislation that would commit the United States to respond to a federally sponsored referendum failed due, as most observers agree, to the inclusion of the statehood option. See Rubén Berríos Martínez, *NACIONALIDAD Y PLEBISCITO*, *supra* note 26, at 43-94. See also Manuel Rodríguez Orellana, *Legal and Historical Aspects of the Puerto Rican Independence Movement in the Twentieth Century*, 60 REV. JUR. U.P.R. 567 (1991); *Human Rights Talk*, *supra* note 6.

40. In electoral theory, the third-party syndrome leads voters in a system that does not provide for proportional representation to shift support, from a preferred or protest third-party candidate, to another candidate perceived as more nearly capable of defeating the incumbent.

41. Benjamín Torres Gotay, *Celebran en Vieques el reclamo de paz*, EL NUEVO DÍA, July 30, 2001, at 4; see also *Contundante mensaje al Navy: Amplio triunfo de la 2*, EL NUEVO DÍA, July 30, 2001, at 1.

much-needed cover from the rubble of the Twin Towers. Calderón used the events of September 11 to distract from her administration's half-hearted efforts.

The argument that September 11 had "changed everything" thereafter became a litany to justify inaction. Although she criticized and opposed Clinton's plan for Vieques, she suddenly embraced his 2003 target date for the cessation of military activity, hortatively articulated by George W. Bush in Sweden.⁴² She remained silent on the return of lands confiscated by the Navy to the people of Puerto Rico, and she backtracked on cleaning up the environment. In fact, the commonwealth's Secretary of Justice and the Resident Commissioner in Washington announced negotiations with the Navy at the National Oceanic and Atmospheric Administration (NOAA) in Silver Spring, Maryland, on "mitigation" of future environmental damages in Vieques—the very environmental damages she had sworn to end.⁴³

On status, the governor continued to pay lip service to her promise to appoint a consensus commission to "improve" the commonwealth; though how that will interact with legislative plans, evolving at the time of this writing, for a People's Assembly on Status—and with the Presidential Task Force,⁴⁴ if it is ever activated—remains to be seen. Her government still promotes the idea of Puerto Rico's capacity for foreign relations and the possibility to decide on the applicability of federal laws in a commonwealth under the sovereignty of the United States.⁴⁵ Reports from Washington, however, do not support this contention.

When asked about the commonwealth arrangement's possible participation in international organizations with foreign relations capacity, a presidential spokesperson at the White House was reported as saying that, "as an integral part of the United States, Puerto Rico is well represented by the [U.S.] Department of State."⁴⁶ On the power to veto the applicability of federal laws in Puerto Rico, she further stated that, "[a]ll federal laws apply to Puerto Rico, with the exception of those determined by the U.S."⁴⁷

Typically, those acting out of dependence know they owe something in return, even if they find the idea revolting.⁴⁸ However, the uncertainty of what the Puerto Rican government is bargaining for is worrisome, when negotiations with the Navy appear to take future maneuvers for granted, and Washington policy toward the commonwealth arrangement remains unchanged.

The statehood party, for its part, has been in total disarray after an unexpected electoral defeat. It has been grasping for an opportunity that would cast the leadership in an endearing, mellow mood before U.S. authorities. The relationship between provider and dependent is "the domain of reciprocal mistrust."⁴⁹ George W. Bush illustrated this principle when he stated that Puerto Ricans are not explicitly Americans, but, really, "friends and neighbors" who did not

42. Statement by George W. Bush on Vieques, June 14, 2001, in Sweden; see *supra* note 34.

43. Robert Friedman, *Navy to Look for Options to Reduce Environmental Damage*, THE SAN JUAN STAR, Apr. 25, 2002, at 6.

44. *Supra* note 33.

45. Resident Commissioner of Puerto Rico in Washington, Address at the John F. Kennedy School of Government, Harvard University, *The U.S.-Puerto Rico Relationship Revisited: Building a New Consensus* (Apr. 26, 2002).

46. Lina M.F. Younes, *En Casa Blanca: Puertas cerradas a desarrollo ELA*, EL VOCERO, May 6, 2002, at 3; Robert Friedman, *PDP Holds on to Hope*, *supra* note 2.

47. Lina Younes, *supra* note 46; Robert Friedman, *PDP Holds on to Hope*, *supra* note 2.

48. ALBERT MEMMI, *DEPENDENCE* 94 (1984).

49. *Id.* at 68.

want “them,” the real Americans, in Vieques.⁵⁰ This statement made statehood leaders wary that the president of the United States might have come to realize that Puerto Ricans were, after all, *not really* Americans, but a distinct people. With renewed fervor to convince their providers of their faithful devotion to statehood, the cause that slipped ever farther away from their reach, many of its leaders adopted the revolting idea that the U.S. Navy should continue bombing Vieques, presumably to convince Americans that Puerto Ricans were even *more American*.

On status, the statehood party appears to subscribe in practice to the idea of letting sleeping dogs lie. While its leaders denounce colonialism and pay lip service to the idea of integration of a distinct cultural entity to the body politic of the United States, they have announced in advance their refusal to participate in a People’s Status Assembly or in any dialogue on status. Their hope is pegged, not on any sense of real patriotism toward the United States, but on the growing dependence on federal transfers as a one-way ticket to statehood.

Puerto Rico’s two major parties’ unholy alliance resulting in favor of colonial stagnation has encouraged the Navy and its judicial sentinels to new heights of insolence. As if confident of a European-like wave of extreme right-wing protection, the U.S. Navy has continued to boldly announce its plans for future maneuvers. In addition, true to the role that the 1945 War Department memorandum had envisioned for unrestricted military prerogatives over public utilities,⁵¹ a federal court of appeals confirmed the Puerto Rico-based U.S. District Court’s decision that the U.S. Navy could continue to take and use, for free, as much water as its imperial heart desired for its naval station, from a river that supplies drinking water to Puerto Rican communities on the eastern part of the island.⁵²

Too recently, in keeping with the Navy’s history of insolence in Vieques, Puerto Rico witnessed an incident reminiscent of a war movie of the 1940s and 1950s. During the military maneuvers of April 2002, a group of sex-crazed Marines charged with security at the Navy’s Camp García installations played the role of occupying forces overrunning an enemy town—this time, Puerto Rico’s capital.⁵³ The group’s commanding officer, Rear Admiral Kevin Green, provided official transportation from the U.S. naval base at Roosevelt Roads in eastern Puerto Rico to a brothel in Old San Juan. There, they got into a brawl and “bouncers” expelled the rowdy Marines. The fight continued outside the establishment between the Marines and the bar’s security personnel and local residents who assisted them. Reportedly, the Marines—ten of whom suffered nasty cuts and bruises—finally proceeded to curse, urinate, and vomit in front of television crews and cameras in the street.⁵⁴ The true sentiment of U.S. military authorities toward Puerto Ricans’ demand for respect and dignity could not be clearer.

Still, the quest for peace in Vieques commands the support of the vast majority of Puerto Ricans and of those who, like PIP members and others, continue

50. Statement by George W. Bush on Vieques in Sweden, *supra* note 34.

51. *See supra* note 11.

52. *United States v. Commonwealth of Puerto Rico*, 287 F.3d 212 (1st Cir. 2002). *See also Court Rules Navy Has ‘Sovereign’ Right to Take Water from River to Naval Station*, THE SAN JUAN STAR, Apr. 26, 2002, at 8.

53. Miguel Rivera Puig, *Viven ‘la vida loca’ marinos en bares SJ*, EL VOCERO, Apr. 24, 2002, at 23.

54. *Id.* *See also* Laura Labertelli, *Marines Not Expected to File Charges in Brawl*, THE SAN JUAN STAR, Apr. 26, 2002, at 4; María de Lourdes Santiago, *Mr. Green soltó su jauría*, EL VOCERO, Apr. 30, 2002, at 39. For an incomplete and misleading account that omitted the described facts, see Associated Press, *Marines Are Beaten by Mob in Puerto Rico*, N.Y. TIMES, Apr. 24, 2002, at 18.

to engage in a civilized and peaceful struggle to unmask the abuse of U.S. authorities that continue to imprison decent men and women—already over 2000—for a petty offense. Recently, a contingent of PIP women, led by the party's young vice president, attorney María de Lourdes Santiago, spent the entire month of April serving a thirty-day sentence for trespassing on Camp García during the Navy's military maneuvers in Vieques that month.⁵⁵

As has been since the 1898 invasion, however, the United States continues to be "interested in the cage, not the birds."⁵⁶

V.

The federal prison in Puerto Rico, the Metropolitan Detention Center, resembles modern-day Puerto Rico. As in most modern residential areas in Puerto Rico, there is armed security around the clock. The inmates are well fed and enjoy freedom like the commonwealth's "maximum autonomy compatible with the federal system." Only the bars in the colonial prison of Puerto Rico's commonwealth arrangement are less evident. The struggle for Puerto Rico's sovereignty and decolonization is the struggle to break out of the historical detention center of U.S. colonial rule.

Nevertheless, the day is near when the U.S. Navy will have to permanently cease its military maneuvers in Vieques. As a recent editorial in the American newspaper in Puerto Rico has finally recognized:

Reports out of the Pentagon indicate the Center for Naval Analysis is moving steadily toward identifying alternatives to replace Vieques as the principal site for Navy maneuvers in the Atlantic area.

Increasing attention is focusing on installations at Eglin Air Force Base and Pinecastle in the Florida panhandle for air-to-land bombing exercises and on a combination of East Coast bases in North Carolina for ship-to-shore gunnery and amphibious landing practice.

...

President Bush has said he wants the Navy to aim for May 1, 2003 as the date for leaving Vieques, and Navy Secretary Gordon England has seconded the motion. The way the Pentagon is

55. Nadesha Karina González, *Libres las cinco pipiolas*, EL VOCERO, May 1, 2002, at 18; Benjamín Torres Gotay, *Salen de la prisión cinco mujeres independentistas*, EL NUEVO DÍA, May 1, 2002, at 31.

56. This was the phrase used in the 1930s by Nationalist Pedro Albizu Campos, founder of Puerto Rico's modern independence movement. See Rubén Berrios Martínez, *Puerto Rico's Decolonization*, *supra* note 7, at 104. Interestingly, a nonscientific web survey conducted by a prominent pro-statehood family-owned newspaper revealed that more respondents would choose to name a new public events arena in San Juan after Albizu Campos, over the 1930s pro-statehood leader José Celso Barbosa, or the 1952 commonwealth founder Luis Muñoz Marín. EL NUEVO DÍA, May 13, 2002, at 3.

talking and the Center for Naval Analysis is moving suggests they are trying to meet that deadline.⁵⁷

Thus, civil disobedience in the quest for peace has demonstrated two important truths about Vieques. First, while it is convenient for the United States to conduct its military exercises there—to the detriment of its Puerto Rican inhabitants—the island-municipality is not indispensable for the defense of the United States. The second important truth about Vieques is that the progress made in the struggle would not have been possible without the determination of the Puerto Rican people to demand and protect their rights, and without the widespread support enjoyed by those who have been willing to submit to the consequences of violating unjust laws.

As professor Berrios has written, “In 1898, the Navy was the moving force behind the invasion of Puerto Rico and has, since then, remained the most resolute supporter and proponent of our colonial status. In order to break with powerlessness, we Puerto Ricans must prevail in Vieques.”⁵⁸

The last bomb dropped on Vieques will signify an enormous achievement in Puerto Rico’s struggle to break its colonial sense of powerlessness. But a triumph in Vieques is only one more step—like Lares in the nineteenth century—toward resolving Puerto Rico’s colonial status. The PIP is continuing its grassroots campaign throughout the island to gather and strengthen support for a People’s Assembly on Status. It envisions the Presidential Task Force on Puerto Rico’s Status—if the U.S. government finally takes action—as the proper interlocutor in Washington for the work of a status assembly.

The growing strength of Puerto Rico’s national identity and the federal unitary constitutional system of the United States make Puerto Rico’s integration as a state a practical impossibility, if a Caribbean Quebec or Northern Island are to be averted. Furthermore, those who clamor for the protection of threatened species must minimally agree to the moral imperative to protect the diversity of peoples on this planet, including Puerto Rico’s distinct identity. The protection of the Puerto Rican nationality, constructed by the toil of 500 years of human history, is undoubtedly worthy of such human respect and protection. And since the anachronistic commonwealth arrangement is the problem, it cannot be the solution. Accordingly, Puerto Rico’s sovereignty is not a matter of “if,” but of “when.”

Professor Berrios has pointed out, however, that there are sectors in the government of the United States for whom the outmoded “possession” of the territory at the entrance of the maritime routes into the Caribbean remains critical. These factions would bide their time until a new generation of politicians sympathetic to their imperial cause comes to power.⁵⁹ These reactionary foci would “mothball” Vieques under the Scarlet O’Hara philosophy that tomorrow is another day. The propensity to dominate people, against their wishes and best interests, for the sake of those U.S. sectors’ own interests raises the moral issues that I wanted to share with you.

We in Puerto Rico will continue to keep the pressure for the demilitarization of Vieques and the decolonization of Puerto Rico, until we prevail.

57. *Other Alternatives for Navy Training*, THE SAN JUAN STAR, Apr. 23, 2002, at 33.

58. Rubén Berrios Martínez, *Bombs away . . . from Puerto Rico*, THE WASHINGTON POST, Nov. 1, 1999, at A27.

59. See Rubén Berrios Martínez, *¿Hacia dónde va Vieques?*, EL NUEVO DÍA, Apr 17, 2000.

We are willing to face the consequences of our actions, as we have demonstrated, through every peaceful means available—from reasoned academic discourse, through the political process, to civil disobedience. Law teachers and jurists like you can no longer shun the moral obligation to educate Americans about Puerto Rico's unnatural condition under U.S. rule. Latinas/os and all Americans of good will—undoubtedly the vast majority—must be willing to learn and help others learn the moral imperative of our struggle.

That is why I am here today. If you support us in this cause, the triumph of the human spirit that Puerto Rico's liberation represents will also be your own.

