

## Constitutional crisis?

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The 19-count indictment for federal crimes against Gov. Acevedo Vilá has shocked Puerto Rico like nothing else in recent memory. The reactions to the indictments have taken partisan and ideological lines. The matter is highly emotional for the Popular Democratic Party (PDP). The New Progressive Party (NPP) is using the charges of corruption with a vengeance. The positions taken now will nurture the political discourse of the different parties up to the election. Inasmuch as the criminal process against the governor will unfold during the coming months, and news about it fills the front pages, the issue will be the principal subject of debate during the campaign leading up to November. The way things are shaping up, at the end of the day, we may be faced with a constitutional crisis.

Now, let me first define what I mean by a constitutional crisis. A constitutional crisis in this context is one where the constitutional framework under which the government operates loses its legitimacy. The constitutional framework for the operation of the federal and Commonwealth governments in Puerto Rico is the U.S. Constitution, the Commonwealth Constitution, and the compact between the people of Puerto Rico and the Congress of the United States contained in the Federal Relations Act, Law 600, which ushered in this constitutional framework and expressed that the purpose of the framework was to provide government by consent for the people of Puerto Rico.

The consent of the governed is the fundamental principle of democracy. It is the underpinning of our constitutional framework. When this consent is eroded, there occurs a constitutional crisis. This is what looms on the horizon if the parties maintain the positions that are emerging in the aftermath of the indictments.

The democratic legitimacy of our constitutional framework has always been challenged by the *independentistas*. So, it was no surprise that Rubén Berríos, the president of the Puerto Rican Independence Party, stated that the indictments revealed a deeper problem, which is the existence in Puerto Rico of the federal court: “In Puerto Rico, there exists a federal court because there exists colonialism, and that court will always act in order to defend the interests of the U.S. regardless of whether the governor is innocent or guilty.” In making such a sweeping statement that denies the possibility that there can be a fair trial against the governor in federal court, Berríos forgets that Filiberto Ojeda was acquitted by a jury in that same court.

The NPP did not originally levy the charge of colonialism against the U.S. Gov. Luis A. Ferré assigned his secretary of Labor, Julita Rivera de Vincenti, to defend our relationship with the United States before the Decolonization Committee of the United Nations. But this policy changed with Rosselló, and the current position of the NPP is that Commonwealth is a colonial relationship unfit to be on the ballot for self-

determination with statehood or independence. They have made deep inroads with this position into the Congress with the Young Bill and into the White House with the Task Force Report that Fortuño supports.

So, support for the present relationship has come to depend upon the Popular Democratic Party. This support is being tested by the indictments. The governor has stated the indictments are “lies,” “falsehoods” and “politically motivated.” This political motivation has been attributed by the governor to the U.S. District Attorney. The PDP has set up a multimillion-dollar fund to solicit contributions from anybody wishing to defend the governor or anybody else who is charged as to the facts pertaining to this case.

Former Sen. Victoria Muñoz Mendoza has entered the political fray in his defense. “What is at stake here,” she says, “is more than a candidate; it is the institutions that the parties are in a democracy and what we are as voters.” According to an interview in a local daily “...What is truly relevant for her is that the people of Puerto Rico must stand up—beginning with the *Populares*—and show the federal court it does not have the authority to decide who are the candidates of our political parties.”

In the same interview, the former senator is asked if she has asked the governor whether the charges of improper conduct presented against him in federal court are true. With utmost candor, former Sen. Muñoz said it never crossed her mind to do so because “*yo sabía que no era culpable de delito alguno.*” That is, she knew he was not guilty of any crime.

If we take into consideration this type of emotional response and the fact that up to now the PDP leadership is towing the same line as the governor and that the party—not the governor as an individual—set up the multimillion-dollar defense fund, then it seems obvious that the legitimacy of the constitutional framework is at issue. This is a slippery slope, which if carried to its logical conclusion, will deprive the Commonwealth of its democratic political support.

It goes against the fact that, upon entering into the Compact back in 1952, the people of Puerto Rico gave their consent to the application of federal law through the federal court in Puerto Rico through a Compact recognized by the United Nations and the federal government as establishing a noncolonial relationship.

The main purpose behind the efforts to enhance the Commonwealth has been to correct the fact that we do not participate in the approval of federal laws. This should be done by affording Puerto Rico more autonomy and providing for some way of participation in federal decisions consistent with the autonomic nature of the Commonwealth. But, from the time of Luis Muñoz Marín to the time of my stewardship of the Popular Democratic Party, the party never took the position that we were a colony of the United States. To my knowledge, in spite of the opinion of certain leaders, this holds true as far as the party is concerned.

If the PDP approaches the defense of the governor from this premise, then its defense must be on the merits of the charges leveled against him, not on abuse of power by the federal court in Puerto Rico. The

governor must provide the PDP with the information proving the charges against him are lies and falsehoods so the party may rebut these charges in the political arena. Then, the debate would turn on the real facts pertaining to the indictments, not on ideological considerations.

If the PDP does not change the direction of its discourse, we will end up in November with the NPP charging the PDP as an institution with corruption and the PDP defending the governor on the basis of his being a victim of colonialism.

