

AUTONOMY FOR PUERTO RICO

By CARL J. FRIEDRICH

THE longest report in recent months that United Press was asked to furnish was the transcript of the Congressional debate on the constitution of Puerto Rico; it came from Puerto Rico's leading newspaper, *El Mundo*, published in San Juan and opposed to the present government of the island. How peculiar an item this story represents may not be apparent at first sight: that there should be a congressional debate on the constitution of a territory of the United States which is not becoming a state of the Union, yet is not seeking independence either. There are many who are not even aware of the fact that Puerto Rico is peopled by over two million inhabitants speaking Spanish, men and women who are proud of their Spanish heritage and yet equally proud of their American citizenship, conferred upon them in 1917. At least this is true of the vast majority of them. Only less than ten per cent support the Party favoring independence of the island. This was not always so. For many years, the "nationalist" sentiment dominated much of the thought of the islanders, and political battles were mostly waged over whether Puerto Rico should seek independence or statehood in the Union. It was only in the late thirties that the imaginative, indeed truly extraordinary Muñoz Marin, since 1949 elected governor of the island, organized the Popular Democratic Party. This party has swept the Puerto Rican people into its fold since that time to such an extent that today Muñoz Marin has to struggle to keep any kind of opposition going, by granting seats to opposition groups, even if they do not have the necessary votes. When I had one of my visits with the Governor last year, he relaxed, after some of the more serious issues had been settled, by musing over the question of how he would go about it, if he were to organize an effective opposition to his own party! His ideas were quite striking, in that they started from the acceptance of the central policy of the Popular Democrats that the status of Puerto Rico was less important than its economic and social well-being. As Muñoz Marin himself so dramatically puts it: If we seek statehood, we die waiting for Congressional approval, and if we adopt independence, we die from starvation—in any case, we die.

Puerto Rico has indeed achieved the most remarkable economic progress in the course of the last twelve years. Aided

by the special wartime situation which caused a number of scarcities in the United States and put a high premium on sugar and rum, Puerto Rican progress can be measured in terms of employment, production, education, and any number of other yardsticks. These prove beyond the shadow of a doubt that the island, while still confronted with the most appalling poverty of many of its inhabitants (the per capita annual income in 1949 was \$319 as contrasted with \$1,330 for the rest of the United States), is going forward very rapidly. As a result, the spirit in Puerto Rico is one of vigorous enterprise and considerable confidence. At the same time it has to be borne in mind that Puerto Rico benefits very greatly from her connection with and inclusion in the customs of the United States. For not only does Puerto Rico receive about \$41,000,000 (in 1949) in various federal funds, under existing legislation, but its inhabitants are exempt from federal income tax, while customs collected in the island are refunded to the island treasury.

Yet the pressure of population is so great, Puerto Rico having almost the highest birthrate in the world today, and an annual increase of about 34,000, that the most desperate situation would arise, if her citizens were not, as citizens of the United States, able to migrate freely to any part of the great Continental Union. Indeed, to many Americans Puerto Rico is known mainly through these "foreigners" whose divergent speech, habits, and inclinations have led in some cases, especially in New York City, to serious complications. The government of the island has, however, recently inaugurated vigorous steps to improve these conditions, and it is probable that these maladjustments will be reduced, if not overcome. It is curious how few Americans realize that these Puerto Rican laborers are fellow citizens who acknowledge their allegiance to the constitution and the flag perhaps more fully than many a *Norte-Americano*.

It is this attachment to the constitution of the United States, placed in jeopardy of course by the high degree of illiteracy in Puerto Rico (20%), which found its expression in the drive for a constitution of the island. This is the central aspect of the extraordinary development by which there has now been added to the Union the Commonwealth of Puerto Rico which in Spanish calls itself the Free and Associated State of Puerto Rico. The coming into being of this Commonwealth is a complete constitutional novelty. There is no established

term, either in the American constitution or in the decisions of the Supreme Court, which fits the novel situation that the birth of the Commonwealth heralds. No doubt eventually the Supreme Court will find some such term as "self-governing territory" to designate it, but it does not exist now. And since the constitution gives to the Congress the power to govern the several territories of the United States, clearly the autonomy of the island of Puerto Rico as embodied in its constitution is derived from the Congress. Puerto Ricans will continue to be excluded from participating in federal elections; they will continue to be subject to federal legislation; they will continue to appeal their judicial decisions in appropriate cases to the Supreme Court of the United States. But their constitution has been developed by themselves, merely subject to Presidential and Congressional approval which has now been granted and which presumably cannot hereafter be revoked.

Congress, in July 1950, passed an act "in the nature of a compact" whereby it authorized the holding of elections for a constitutional convention in the island on certain conditions which the act asked the people of Puerto Rico to approve in a referendum. There is an area of uncertainty surrounding the degree to which Congress bound itself by this agreement, since it is an established principle that a Congress cannot bind future Congresses; the leadership in the island is inclined to feel that as a matter of policy, if not of law, the Congress of the United States is in fairness bound to the terms of the agreement. Serious conflicts may yet arise over this issue in the future.

Why did the Congress do it? Because of the friendliness of some Congressmen for Puerto Rican aspirations—shared by the Administration—combined with the hostility of other Congressmen against any new states, but more especially against incorporating into the Union a state containing so divergent a cultural group as the Puerto Ricans. It made the proposal of the Puerto Ricans to organize their own government and constitution, but without statehood, seem a sensible solution. Senator Butler is reported to have said: "Give them anything, as long as they do not want to be a state".

In the Congressional hearings on the matter, some Congressmen were worried about the eventual power to amend this new constitution. Governor Muñoz Marin indicated that he thought this was up to the people of Puerto Rico under the amendment provisions of their constitution. "But suppose

they amended it by striking it all out?" the Congressman inquired. "If we are to assume that the people of Puerto Rico will go mad, we might as well stop discussing the whole matter", Muñoz Marin replied. This was a good parliamentary rejoinder, but it did not really settle a very grave problem. If the Congress has to approve the constitution, presumably it has the right to object to any changes. The analogy to a state constitution, which may, of course, be amended without Congressional approval, does not hold, because a state and its people are represented in the Congress themselves, whereas Puerto Rico continues to have only a representative—its Resident Commissioner—without a vote. On the other hand, what kind of self-government is this, where the people cannot change their own constitution? The matter is further complicated by the fact that the Congress objected to some very central provisions of the constitution, notably those parts of its bill of rights which were modelled upon the UN's Declaration of Human Rights and embodied broad aspirations for social and economic betterment. Since Puerto Rico accepted this kind of Congressional participation in the making of the Constitution, some hold that it cannot very well object to future participation either. And yet, from a political standpoint, considering the future attachment of the Puerto Rican people to their constitution, it is certainly wiser for the Congress to leave to the Supreme Court of the United States any questions regarding the constitution and its compatibility with the federal constitution and to the Puerto Ricans themselves the development of their constitution within the framework thus provided, as is the case with all other states.

This sane view prevailed in the Congress, when the House rejected a motion to reserve the right of approving constitutional amendments, and later the Conference Committee eliminated a contrary motion the Senate had adopted. Thus the crucial principle of constitutional autonomy for the island was made reasonably secure.

The Puerto Ricans insist upon the fact that the agreement by which the constitutional activity was authorized was a compact entered upon by mutual consent. It is the basis, so they feel, of their union with the United States of America. They have proclaimed, in the preamble of their constitution, that the last vestiges of colonialism have disappeared in the principle of the compact and that they believe themselves to be entering upon a new era of democratic civilization. And, in a special

resolution, they gently remind the interested fellow citizen in the North that "nothing can surpass in political dignity the principle of mutual consent and of compacts freely entered upon". In the same spirit, Puerto Rico claims the right to propose and to accept (that is to say, approve!) modifications in the terms of this Compact "so that these relations may at all times be the expression of agreement freely entered upon between the people of Puerto Rico and the United States of America".

Surely this is a novel view, not only for the United States, but in the entire history of federalism, that there might be a part which enters into a compact with the whole. There is something of a precedent in the history of Switzerland, but that was before Switzerland became a federal union. Yet this precedent may turn out to be very fruitful, even very soon, as the program for a European federal union takes shape. In any case, the most curious feature of this compact is that its terms are contained, in accordance with Law 600, in those sections of the earlier Organic Law which defined Puerto Rico's government and relations with the United States. They are now to be known as the Federal Relations Act.

Contrary to the principle of Law 600 that it aims to confer self-government upon Puerto Rico, and the repeated claim that the last vestiges of colonialism have disappeared in the principle of the Compact, the Federal Relations Act does nothing to provide Puerto Rico with an equivalent to the usual participation in federal elections, both congressional and presidential. As noted, the citizen of Puerto Rico remains excluded from this paramount field of self-government which is the primary interest of all other American citizens. The Puerto Rican government excuses this state of affairs by pointing out that Puerto Ricans do not pay federal income taxes: "without taxation no representation". Actually, it seems highly doubtful whether the new status of Puerto Rico can meet the standard set by the United Nations for declaring a dependent territory to have become self-governing. There is little question that the Federal Relations Act will have to be amended soon to provide an adequate pattern of consent. But for the time being, then, we have an act of Congress which is to be changed only by mutual agreement between the Congress and the people of Puerto Rico—an unheard-of innovation. Will it work?

If the extent of the authority of Puerto Rico's constitution-makers, elected in August 1951, was uncertain, they did not

let that worry them. Composed of an overwhelming majority of Popular Democrats, "opposed" by a handful of Socialists and Statehood Partisans, the Convention was expected to finish its job in record time. Governor Muñoz Marin estimated that they would be done by November. Actually, they labored hard until February 6 to hammer out a document which in most essentials resembles other American state constitutions. Indeed, a commentary published since its ratification in March points out for virtually every article the precedents in various American constitutions. It clearly shows that in politics and government, the Puerto Ricans wish to stay squarely within the American tradition. It might seem that this determination was reinforced by the need for Congressional and Presidential approval of their work. No doubt some of the members of the convention were influenced by this thought. But the requirements laid down by Law 600 were very broad, calling only for a republican form of government, for a bill of rights, and for conformity with the constitution of the United States and the Federal Relations Act. The intent of Congress to confer a broad grant of power was reinforced by a message from Harry Truman at the time of the opening of the Convention assuring it of the sympathy of the American people and implying that they were free to do what they considered right within this broad framework of policy.

It seems extraordinary that a convention so clearly dominated by one party and so effectively led by a dominant personality should not have been able to avoid protracted debates over marginal issues. But there were many sharp disagreements within the party's councils, especially in the matter of the Bill of Rights. The convention wrote into the constitution, of course, the traditional rights, such as the freedom of religion, of speech, the press, assembly and petition, of *habeas corpus* and similar procedural protections for the individual, of the prohibition of searches and seizures, and of equal protection and due process. The constitution also introduced trial by jury in all felony cases which was not in effect in Puerto Rico until now. But it also eventually included those newer economic and social rights, contained in the UN Declaration of Human Rights, which the Congress rejected.

Perhaps Muñoz Marin could have, through strong leadership, forestalled these protracted arguments. But he decided early not to force his leadership; he contented himself with the chairmanship of one committee, and allowed Dr. Antonio

Fernós-Isern, the island's Resident Commissioner in Washington and a very skillful politician, to be elected chairman of the Convention. Interestingly, the two issues which occasioned the most protracted arguments involved the position of the Catholic Church and of organized labor. The Church, to which well over 90% of the island's population belongs, had long been smarting under a provision of the Organic Act which stated very radically the principle of the separation of church and state, especially as concerns any financial support of church work, including schools. When this provision reappeared in some drafts, a storm broke loose for which some ecclesiastical partisans had carefully prepared the ground. At one time in November it looked as if a complete deadlock would develop but eventually a compromise was reached which eliminated the prejudiciously worded provisions from the constitution in their old form, but retained the substantive idea of the separation of church and state intact. Certain clauses of the constitution which might have been misinterpreted as aiming to exclude parochial schools from the island were eliminated at the request of the U.S. Congress.

As for labor, the contentions developed over the right to strike which was being ardently demanded by the Unions. The brilliant chairman of the committee of the convention in charge of the Bill of Rights tried very hard to avoid this provision being included, but organized labor stood pat, eventually a section was worked out which guarantees the right to strike to all those employed in private enterprises and in such public enterprises as resemble private ones. This means, of course, that the right to strike is denied to regular employees of the government. Furthermore, the legislature's right to deal with grave emergencies which imperil the public health, public welfare, or the operation of the public is expressly safeguarded. Similar provisions are found in a number of state constitutions, *e.g.* New York and Missouri. The principle of the right to strike is enunciated without any qualification whatever in the Universal Declaration of Human Rights adopted by the United Nations. So the new constitution is here, as in other respects, in line with "advanced" thought.

The new constitution contains a number of other forward-looking and novel provisions, among them the prohibition of discrimination on various grounds, especially race and religion, the prohibition of the death penalty and of wire-tapping, the protection of the individual against attacks on his honor and

reputation, and the protection of the press against seizure by the government. Each one of these rights represents a significant advance in American constitutional jurisprudence, even though they may have had a measure of judicial recognition elsewhere, under now existing constitutions.

The fact that the United Nations' Declaration of Human Rights had been approved by the Congress of the United States caused some leaders in Puerto Rico to include substantial portions of this Declaration in their drafts of the constitution. It was felt that the Congress could not in fairness reject what it had once accepted. A number of these newer social and economic rights, like the right to work and the right to a free education, are clearly beyond the resources of the government of the island to provide. Taking counsel over this patent fact, the Convention eventually adopted a sensibly modified version of these rights. It acknowledged their existence, but then proceeded to add that these rights are in their realization closely connected with the progressive development of the Puerto Rican economy, and that the resources for their fulfillment are not yet available. It therefore enjoined the people and the government of Puerto Rico to do everything in their power to promote the greatest possible economic progress. It seemed an innocuous and sensible statement, until some members of the Congress burst forth into passionate oratory, denouncing these provisions as "contrary to the United States constitution". In spite of the fact that every one of these provisions is found in both constitutional and ordinary legislation somewhere in the United States, Representative Halleck of Indiana did not hesitate to declare that this section "departs completely from the whole philosophy of the Bill of Rights of our own constitution".

There is no question that provisions such as the guarantee of a free education go beyond the restrictive conception of rights prevalent in the eighteenth century. But few have held that the ideas of public education or of social security which form a prominent part of Article II, section 20, are unconstitutional. Yet, so general was the opposition in Congress that in spite of vigorous pleading by certain members such as Congresswoman Bosone from Utah, who had been visiting Puerto Rico and its Convention during the time it was at work, the House of Representatives decided to delete this section from the constitution. It was pointed out that Congress had exercised such discretion before, when states like New Mexico were ad-

mitted to the Union. Puerto Rico's representative, Dr. Fernos-Isern, was found willing to go along. It was also asserted that such a change could be approved by the Puerto Rican Convention and did not have to go back to the people for a new referendum. The Congress thereupon asserted itself against the overwhelming majority of the Puerto Rican people and their representatives, a most unwise proceeding, surely. For, according to sound democratic principle, Puerto Rican leadership decided to submit the Congressional alterations to a referendum this fall, although formally they were accepted by the Convention so as to complete the constitutional task; it is confidently predicted that the people will confirm this decision. But the very fact that such a referendum will have to be held will highlight the unwisdom of Congress. For the development of self-government in Puerto Rico is closely bound up with the fight for democracy against Communism. This was brought out forcefully in the Congressional debates. It was urged by a number of those who favored acceptance of the constitution without conditions or reservations that Congressional interference would mean feeding the propaganda mills of Soviet Russia, that to deny the rightful aspirations of Puerto Rico would enable the Communists to claim that the United States are still practising colonialism and imperialism. But quite apart from Soviet propaganda, Communism is given a real impetus by frustrating the forces of orderly progress. The Congressional action also hurts the present pro-American leadership by strengthening the hand of the *Independentistas* who have been suspected of collaboration with the Communists, anyhow. All this is worth remembering, yet talking about the Soviets serves to confuse the real issue which is that the Congress exceeded the self-imposed limits which it had agreed to observe when it entered into its compact with the people of Puerto Rico. It would be much better to state the proposition positively by pointing out that this Puerto Rican constitution-making derives its special significance from the fact that it shows, as the Philippines had before, that the American people really are averse to imperialism and that they make every effort to enable a dependent and colonial people to decide for themselves under what kind of government they wish to live.

It is a striking indication of the extent to which Puerto Ricans have become Americans in general outlook that there was virtual unanimity on framing a constitution in line with the American tradition of state government. More especially

were they quite determined to build their government upon the pattern of the traditional separation of powers, with a governor as chief executive, a representative legislature and an independent judiciary. As mentioned before, all the state constitutions, as well as the model constitution of the National Municipal League were used extensively in the preparatory work. This was carried even to the point of retaining a bicameral legislature, though there is less reason for it than in most American states. The island is very compact, is clearly centered in San Juan, and has a dominant political party, all conditions favoring the use of a single legislature for the purpose of concentrating responsibility. But a senate had been set up under the Organic Law and the inertia of political tradition prevailed over all counter-arguments.

While the constitution, then, follows American precedents, there are some important divergencies. For one thing, to start with what appears the greatest flaw in the constitution, the provisions for local self-government are entirely inadequate, if not to say wholly lacking. Instead, the constitution continues to stress the Spanish tradition of centralism and makes the municipalities almost completely dependent upon the central government. It thereby deprives the Puerto Rican people of that inestimable school of grass roots democracy which local government provides. It seems generally true of Latin America that the weakness of democracy is closely bound up with this failure to build it from the ground up; the same may be said of Spain, Italy, and Germany. This defect is the more serious since so many Puerto Ricans are illiterate, and hence could participate in self-government effectively only on the local level. Indeed, while the predominance of the Popular Democratic Party is a source of strength to the present imaginative leadership, it testifies also to the relatively low state of political education in the island. Generally, one-party tendencies ought to be viewed with apprehension, from a democratic standpoint, and this is especially true where the one party is not unwilling to use demagogic appeals. Indeed, those prophets of gloom who predict that Puerto Rico will go the way of so many Latin American countries, or even now assert that Puerto Rico is a kind of dictatorship, might prove right, if it were not for the fact that the military forces of the island are those of the United States, and that therefore no military junta could hope to displace the present democratic government.

Against this great weakness, a strong point of divergence

is found in the judiciary. American democracy is distinguished by the weighty role which it assigns to the courts as guardians of the constitutional order. Puerto Rico is fully cognizant of this American tradition. The jurisdiction of the United States Supreme Court over Puerto Rico's laws and constitution is fully and clearly established by the constitution. What is equally important, she is adopting under the new constitution a judiciary organization which is modelled upon the best American precedents. Luckily, Puerto Rico has always had the practice of appointing judges, rather than electing them. On the other hand, patronage and other weaknesses are an often-criticized feature of the Puerto Rican lower bench. The new constitution transfers judicial administration from the executive branch to the judiciary itself. It makes all the courts of Puerto Rico into one system over which the Chief Justice of the Supreme Court presides. Apart from appeals to the United States Circuit and Supreme Court, all judicial business is thus directed by the highest judicial officer in the island, the Chief Justice of the Supreme Court, as it is under the recent constitutional reform in New Jersey. He is given an administrative director to assist him in this work. Some proposals went even further and would have put by the side of the Chief Justice a commission of independent status to handle all matters of judicial personnel; but the convention retained the system of gubernatorial appointments. Actually, the situation is at present unsatisfactory, largely because the Attorney General is prevented from securing more high-class personnel for the lower bench on account of the inadequate salaries provided for them. This aspect of the matter will presumably be remedied; in any case, the independence of the judiciary has been considerably strengthened by protecting their tenure against administrative and legislative interference. The judicial system as established by the new constitution thus corresponds closely to the model worked out and advocated by the American Bar Association and similar bodies. It has since, and in record time, been implemented by a Judiciary Act. It is, as one great jurist, Dean Roscoe Pound, is reported to have commented, as good as any judicial system now operating in the Continental United States and better than most.

Mention has already been made of the problem of Congressional approval for amending this new constitution. In order to minimize the serious implications of this issue, the con-

vention took care to limit the scope of future amendments by embodying some of the basic conditions imposed by Congress into its provisions for amendment, and the Congress further detailed these limits. Thus neither may the republican form of government be altered, nor the bill of rights be abolished by any amendment whatever. To these provisions there will presumably be added by constitutional amendment this fall a provision required by the Congress as a "condition" of its approval and since accepted by the convention. It stipulates that amendments or revisions of the constitution should be consistent with the Congressional resolution approving the constitution, with the United States constitution, with the Federal Relations Act and with Law 600. As a result, it seems highly improbable that any real issue over constitutional amendments will ever come up, so that the intrinsic doubtfulness of Congressional self-limitation in this field will remain hidden.

Another chapter of American history opens with the constitutional birth of Puerto Rico as a self-governing part of the United States. It had been hoped that this new era could be initiated and a celebration could be held on July 4 as a suitable twentieth-century commentary on the time-honored phrases of the great Declaration. The Congressional conditions made it impossible. The Convention had to be reconvened to approve what the Congress had resolved. But when the delegates gathered for the celebration of the adoption of Puerto Rico's constitution, on July 25, 1952, there was great joy. To be sure, the present step should not be over-rated. In a purely practical sense, the new constitution does not change the status of the island; it rather fixes, as most good law does, established practice by codifying it.

In his speech upon the occasion of the solemn celebration of the constitution, Governor Muñoz Marín stressed the symbolism of the new flag. It is the flag which so long has symbolized the struggle for Puerto Rican independence. Muñoz Marín insisted that it was not the symbol of nationalism. "It belongs to all Puerto Ricans. It belongs to those who have used it in the past with terrorism and it belongs to those who raise it as the insignia of peace and of valor in the present". He linked the flag to the fight for freedom and he drew a vivid picture of the aspirations of the Puerto Rican people. There was an anxious moment when the Governor raised the flag; insiders held their breath as the fateful moment passed, fearful that a

shot might ring out from some independentist fanatic. But all remained quiet and serene, and only the next day the independentist leader protested the prostitution of their symbol. To most Puerto Ricans the flag of their commonwealth was now linked to the star-spangled banner. Even though no star was added to it, the teeming humanity of the emerald isle of the Caribbean could look up to the American flag as more truly their own. The venerable constitution for which it stands had given new proof of its extraordinary flexibility and capacity for fostering sound constitutional growth.