Yelling, Not Telling: An Antitherapeutic Approach Promoting Conflict

*Luis Muñiz Argüelles**

> [R]eligious practice does not create a separate region where the Government is barred from enforcing the laws. Otherwise, under the cloak of religious immunity and with the unrestricted constitutional freedom to worship the Creator in and out of acknowledged churches, practices which because they are generally disapproved are defined as crimes with punitive sanction in the penal law, could be developed. . . . [T]he freedom of worship written in the Constitution . . . is not a license to create a separate, untouchable, and autocratic world capable of impunitively offsetting the sensitive equilibrium of the harmonious entity which is the political society. . . . Religious freedom is not an ointment of immunity which relieves those professing it from observing and respecting the laws under which society has been organized, and which gather in their provisions the principles of peace, morals and public order . . . The constitutional protection shelters the freedom of thought but not the liberty of torture.[1]

---

* Professor of Law, University of Puerto Rico, 1979-present; Superior Court Judge, Puerto Rico, 1989–1992; Doctorat de l'Université de Paris II, 1989; J.D. University of Puerto Rico, 1975; M.S. Columbia University, 1970; B.A. Cornell University, 1968.

1. Heirs of Victoria Capella v. Iglesia Pentecostal, 102 D.P.R. 20, 30, 36, 38 (1974) (citations omitted). Quotations are taken from the *Official Translations of the Opinions of the Supreme Court of Puerto Rico*, Vol. 2. Although a part of the United States since its conquest by Spain in 1898, Puerto Rico is a Spanish speaking jurisdiction. Officially, it is bilingual, but most proceedings are conducted in Spanish, even in federal agencies. State court proceedings are conducted only in Spanish, a practice that was validated in *Pueblo* v. *Tribunal Superior*, 92 P.R. Dec. 596 (1965). Puerto Rico's judicial decisions follow the United States model because an American court system replaced the Spanish one after the island was wrested from Spain following the Spanish-American War. Government organization is also patterned after the United States model, but efforts to change other cultural traits, especially language, have failed. Commercial English translations to court reports ceased to be published in 1973, and although official translations are made, they fall years behind the court rulings and are normally available only in the Supreme Court and in some law school libraries. The translations are, at times, awkward, especially if the original Spanish version is difficult to work with. Given that the translations are official, however, I have chosen to use them here, clarifying some phrases that might seem

HeinOnline -- 24 Seattle U. L. Rev. 237 2000-2001

It is with this language that, on February 21, 1974, a unanimous Puerto Rico Supreme Court upheld a ruling by the San Juan Superior Court forcing the defendant, the Pentecostal Church in Old San Juan, to "isolate the sonority of the temple, [a] solution which would preserve the peace of the neighbors and win acceptance and good will toward the church."[2] Such a solution, the court said, was necessary:

> [B]ecause the observants of the Pentecostal religion do not have more rights to their dissonances and uproar than their neighbors to the retreat of the homes . . . [and because] the State cannot show itself to be insensible to the torture and extreme moral sufferings of the persons whose privacy has been invalidated by this practice.[3]

In a recent article commenting on the Canadian Supreme Court's ruling on the legality of a unilateral declaration of independence from Canada on the part of the francophone province of Québec, Professor Natalie Des Rosiers praises the justices' efforts to promote dialogue between adversaries.[4] I present here an example of how harsh, if not outright insulting and prejudiced, judicial language can have the opposite effect: that of escalating, if not actually producing, conflict where it did not previously exist.

In this Article, I will first examine the facts of the *Pentecostal Church* case, where the above quoted offensive language was used by the Puerto Rico Supreme Court (I). Later I will illustrate the reaction this language produced (II). Following this, I will briefly comment on the benefits and limits of a more conciliatory manner of expression (III). Finally, I will raise some questions as to whether the therapeutic jurisprudence movement should venture into conflicts where the parties are, in effect, testing out their respective political strengths or if it should concentrate on the more traditional fields that have earned it a name in legal literature (IV).

I. THE FACTS OF THE *PENTECOSTAL CHURCH* CASE

Neighbors of the Pentecostal Church complained that those who attended services sang and shouted very loudly, clapped their hands, stomped their feet, and played wind and percussion instruments so

---

particularly uncommon.

2. *Iglesia Pentecostal*, 102 D.P.R. at 40-41. The phrase "isolating the sonority of the temple" is taken from the official translation of the court report. It is a direct translation from the Spanish original and perhaps would be better understood if it had been translated as "taking measures to insure sounds generated within the church were not heard outside."

3. *Id.* at 38-39.

4. Natalie Des Rosiers, *From Telling to Listening: A Therapeutic Analysis of the Role of Courts in Minority/Majority Conflicts*, CT. REV., Spring 2000, at 54.

HeinOnline -- 24 Seattle U. L. Rev. 238 2000-2001

loudly that some in the vicinity were forced to leave their homes during the time services were held and others permanently moved away. The noise, they said, was such that many plaintiffs were alarmed, cried in desperation, and felt anguished. The services were held three to four times a week, from 7:00 to 10:00 at night, and on Sundays and holidays during daylight hours.

The court labeled the noise level as one that subjected the neighbors to constant torture and deprived them of what it called the most basic of civil liberties, the right to live in peace in one's own home.

II. THE TONE OF JUDICIAL DECISIONS

This language, which the court surprisingly—and perhaps even sincerely—said was a "call to moderation,"[5] provoked one of Puerto Rico's most monumental public demonstrations,[6] paralyzing traffic for both hours and kilometers on end. The marchers, mainly but not exclusively churchgoers organized by a council of some Protestant churches, gathered and were, not surprisingly, warmly welcomed in front of the Legislative Assembly, which shortly thereafter passed several bills. One bill amended the little-used penal nuisance statute. Formerly, the statute could not be used to prevent the tolling of church bells or to curb religious services. It was amended so as to prevent the statute from barring "the sounds emitted during worship or ceremonial services of duly established churches, sects or religious denominations."[7] A second bill amended article 277 of the Code of Civil Procedure (the civil nuisance statute), barring its application in "activities related to the public worship in churches practiced by different religions."[8] The legislature gave the Environmental Quality Board "exclusive first instance jurisdiction—civil or criminal" regarding alleged violations of statutes regulating unnecessary noises and ordered the Board "to take into account the exercise of such constitutional rights as freedom of religion, freedom of speech, freedom of association and the right of privacy" in drafting its rules regulating sounds.[9]

---

5. *Iglesia Pentecostal*, 102 D.P.R. at 40.

6. The author of this comment covered the march as a reporter for *The San Juan Star*, Puerto Rico's English language daily. The only other similarly massive marches that he has witnessed—one some two decades ago to protest the hosting of the American Southern Governor's Conference, another to protest the Centennial of the American Invasion of Puerto Rico on July 25, 1898, during the Spanish American War, and a third this past February 21, 2000 to protest the U.S. Navy plans to continue using the off-shore island of Vieques as a firing range—have all had nationalistic political implications.

7. P.R. Laws. Ann. tit. 33, § 1447 (1974).

8. P.R. Laws. Ann. tit. 32, § 2761 (1974).

9. P.R. Laws. Ann. tit. 12, § 1131 (1974).

HeinOnline -- 24 Seattle U. L. Rev. 239 2000-2001

The decision by the Court was not, from a legal point of view, flawed. The relevant interests must be balanced when there are clashes of constitutionally or legally protected rights. Civil nuisance statutes have always allowed courts to order parties to take measures to minimize that which affects others to acceptable levels. "Isolating the sonority of the temple" is certainly an acceptable means of achieving the balance the Court was called upon to establish.

What is surprising, and luckily uncommon,[10] is the extremely harsh language used by the Court, which provoked mass reaction and led to absurd legislation that has since been largely ignored. The decision itself has, fortunately, also been ignored, hopefully reflecting an awareness of the fact it was at least badly worded. It has been cited only twice since it was issued, once in a dissenting opinion[11] and once in a majority ruling on a point unrelated to religious ceremonies.[12]

Puerto Rico, one of the last two Spanish colonies in the New World, was officially Catholic for over 400 years, from the arrival of Christopher Columbus in 1493 to its conquest by the United States in the Spanish American War of 1898. Catholicism is the majority religion and, although there is a growth of Protestantism, "duly [and not so duly] established churches" (if such characterization, which was used by the Court, is permissible)[13] remain a minority and thus, unsurprisingly, are more militant than the majority Catholics. This also means that they are more sensitive to hostile language and more willing to demand respect for their rights.

It is this perspective that an insensitive Court ignored when it lashed out against that minority, apparently thinking the majority would support the ruling, as it well could have. The issue, however, is that a court should not use the street language one commonly associates with irate litigants when issuing its decisions. In a pluralistic society, minority rights have to be respected and should be considered beyond the actual rulings. Minorities, especially significant minorities, do not just fade away in silence when threatened. They tend to

---

10. See, for example, Professor Roberto Aponte Toro's comment on another Puerto Rico Supreme Court decision in another highly controversial case involving political persecution, specifically barred by the Puerto Rican Constitution. Roberto Aponte Toro, Norriega v. Hernández Colón: *Political Persecution Under Therapeutic Scrutiny*, 24 SEATTLE U. L. REV. 555 (2000).

11. Ramos Villanueva v. Cintrón, 112 P.R. Dec. 514 (1982).

12. Mercado Rivera v. Universidad Católica, 143 P.R. Dec. 48 (issued June 27, 1997). This case is still unpublished in hard copy, but it is available on the Lexis CD-Rom of Puerto Rico Supreme Court Decisions.

13. The Court, I believe, used the phrase "duly established churches" to distinguish those that were mainstream or traditional from new churches, which were, at the time, a new social phenomenon in Puerto Rico, if not in Latin America in general.

HeinOnline -- 24 Seattle U. L. Rev. 240 2000-2001

fight back, which at times leads to renewed conflict, lasting ill feeling, and a backlash from the majority. Shouting is not always, if it is ever, the best way to achieve consensus.

Professor Nathalie Des Rosiers' article on the Québec independence decision[14] and Professor Roberto Aponte Toro's comments on the Puerto Rico Supreme Court case recognizing a persecuted political minority's rights to freedom[15] outline a different approach—one that has not always been followed either by the Canadian or by the Puerto Rican Supreme Courts in political or other minority issues. This different approach will not in itself provide a quick and easy solution to deep-seated conflicts, as is evidenced by the debate surrounding the Canadian Federal Government's decision to introduce what many Québecers, including their provincial majority government, call a self-serving bill, one that purports to clarify the negotiation conditions set out by the *Reference re Secession of Québec*.[16] A sensible decision, however, does open the door to negotiating that which can only be solved by negotiation. The fact that consensus is impossible to reach without negotiation is illustrated by two centuries of majority/minority debate amongst both English and French speaking Canadians and pro- and anti-independence advocates in Puerto Rico. It is also evidenced by the more or less lengthy and violent debates amongst English and Irish, Spaniards and Basques, American Whites and Blacks, White descendants of European settlers and Native Americans (be they from the American Southwest, the Eastern Great Lakes, the James Bay regions, or the Inuit Far North), and countless others who have faced-off but seldom sought common solutions with each other. To reach common goals, one must be aware that social problems don't just go away by ignoring the claims of others.

Québec will not just float away to the Brittany or Normandy coasts; the Canadian market will still be there if the province splits from Ottawa. North American markets and defense considerations are central to all parties who are now at odds, and all have an interest in resolving these issues with a minimum of economic upheaval, political disarray, or actual bloodshed. Puerto Ricans will always want to be different from Americans, while preserving an entry to a rich United States market, resulting in an uneasy but necessary balance

14. *See generally* Des Rosiers, *supra* note 4.

15. *See generally* Aponte Toro, *supra* note 10.

16. Ref re Secession of Québec [1998] 2 S.C.R. 217 (Can.). As Professor Des Rosiers points out, the Québec Government answered with its own Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State, Bill 99, on December 15, 1999, only five days after the federal bill was presented. Des Rosiers, *supra* note 4, at n.7.

HeinOnline -- 24 Seattle U. L. Rev. 241 2000-2001

between cultural and financial needs. Puerto Rican independence advocates are the living conscience of the cultural survival claims of their people.

Protestants will continue to exist in Puerto Rico and will always exert their right not to be subject to the ways the Catholic majority considers acceptable. They will accept reasonable arguments, but will react and demand respect when pushed, no matter what an insensitive majority or an insensitive court says and does in nonbinding reference cases such as the one issued by the Canadian Supreme Court in the Québec secession case, or in supposedly binding and ignored cases such as the one issued by the Puerto Rican Supreme Court in *Pentecostal Church*.

Conflict is the flour from with which judicial bread is made. The question is not whether we are to make it into dough or let it sit on the shelf naively hoping it will disappear as if it were an unwanted volatile ingredient; it is whether we are to end up eating hard, unleavened loaves or sweet, almond filled croissants. Neither of the two will solve all our nutritional needs, but some will make meals more palatable.

III. THE EXPANSION OF THERAPEUTIC JURISPRUDENCE PRINCIPLES

From a therapeutic jurisprudence point of view, there is another question, however. The question is whether therapeutic jurisprudence should be applied to these conflicts or if, by trying do so, it will lose its specificity and dissolve into a larger medium, that of general alternate resolution.

Therapeutic jurisprudence has traditionally been linked to criminal, juvenile, family, and domestic violence cases, and to the treatment of mentally ill and drug dependent individuals.[17] Professors Nathalie Des Rosiers[18] and Bruce Winick,[19] for example, have suggested that therapeutic jurisprudence be used in other cases, including appellate ones. Professors David Finkelman and Thomas Grisso[20] have rightly linked it to the sociological jurisprudence and alternative dispute res-

17. David B. Wexler, *Therapeutic Jurisprudence in the Appellate Arena*, 24 SEATTLE U. L. REV. 217 (2000); David Finkelman & Thomas Grisso, *Therapeutic Jurisprudence: From Idea to Application*, *in* LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE 587, 591 (David B. Wexler & Bruce J. Winick eds., 1996); Bruce J. Winick, *The Jurisprudence of Therapeutic Jurisprudence*, *in* LAW IN A THERAPEUTIC KEY, *supra*, at 647.

18. *See* Nathalie Des Rosiers, *The Mythical Power of Myth?: A Response to Professor Dauer*, 24 SEATTLE U. L. REV. 307 (2000).

19. *See* Winick, *supra* note 17.

20. *See* Finkelman & Grisso, *supra* note 17.

HeinOnline -- 24 Seattle U. L. Rev. 242 2000-2001

olutions movements. The question remains whether it is desirable to do so.

In trying to make therapeutic jurisprudence an all-encompassing movement, one runs the risk of turning a powerful solution into a weak and easily discarded liquid. What has proved useful in cases where the doctrine has been traditionally applied can become so diluted when trying to use it in other cases that it becomes unrecognizable; it is then ignored not only in the other areas but also in areas where it was gaining the reputation it deserved.

Dialogue, negotiation, mediation, and other dispute resolution methods generally involve some degree of self study, constructive criticism, empathy, and spiritual or moral healing. This inquiry is, at times, helpful in treating the causes of disputes and antisocial behavior. It is also necessary to rebuild broken interpersonal ties.

To try to carry all interpersonal therapeutic and problem-solving methods to other types of disputes may prove counterproductive, however. Political disputes (and minority/majority disputes are often, if not almost always, political, in the best sense of the word) must be resolved on political grounds. This is not to say that dialogue, negotiation, and mediation are inappropriate, but rather that the nature of such methods varies from the dialogue and intervention that serves well in personal cases where therapeutic principles are clearly applicable. It is very different to deal with the mentally ill than to deal with the politically oppressed. The victimized minority is, in the eyes of the majority, the majority's victimizer in a cultural or religious confrontation, for both groups can invoke equally respected philosophic and political arguments to sustain their demands. The demands of one group, however, may well be incompatible with those of the other.

Comprehension will help solve political struggles, but the majority's acceptance of change is often preceded by political action and therapeutic principles that can be seen as an effort to repress those seeking change. By seeking to expand the therapeutic jurisprudence movement into conflicts of this sort, the movement might find itself deprived of the human resources and wide social support it needs to further develop the tools it has developed so well and that serve the needs of those it has focused on. The movement may also find that, if its tools are not all suited for the new type of problem solving game it has chosen to play, the movement itself will be discredited, with a corresponding loss to all.

Listening, not telling, is often very useful, for when one later speaks, one does so with both a full knowledge of what the now listeners are tuned to and a similar knowledge of how what one says can

HeinOnline -- 24 Seattle U. L. Rev. 243 2000-2001

have the desired impact. This is not, however, exclusively related to therapeutic ends. If one tries to claim it is, one risks seeing therapeutic domain discarded as too general to be useful. Therapeutic jurisprudence should learn from the errors of the Law and Economics movement, which tried to change a tool still very useful in legal analysis and policy determination into a sort of new religion, where a party's emotionally driven criminal actions were analyzed as if the, at times, irrational man or woman would refrain from or continue in his or her murderous pursuit of an unfaithful spouse solely on the basis of a cold-blooded analysis of the pros and cons of cutting short the grievous party's life.

HeinOnline -- 24 Seattle U. L. Rev. 244 2000-2001