

## The Criminalization of Socio-Environmental Struggles in Puerto Rico

JOSE M. ATILES-OSORIA\*

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### Abstract

Throughout the twentieth century and the outset of the twenty-first, Puerto Rico's sociopolitical and pro-independence struggles from US colonial rule have been influenced by the emergence of mobilizations for environmental justice. This article suggests that our understanding of both environmental and anticolonial mobilizations can be broadened by considering Puerto Rico's sociopolitical and colonial reality, as well as emphasizing the criminalization processes that take place as an institutional reaction to social mobilization. The structure of the article follows a threefold analysis. In the first part, I describe the historical basis of Puerto Rico's colonial situation, including its environmental impact, outlining the intertwined nature of these two processes. The second part outlines the mechanisms of repression and criminalization developed by the US and Puerto Rican governments. Finally, part three analyses the Puerto Rican environmental conflicts between 1999 and 2012, as well as how pro-environmental civil disobedience became a criminal offence.

### Key words

Puerto Rico; environmental colonialism; criminalization; social protest and environmental justice

### Resumen

A lo largo del siglo XX e inicios del siglo XXI las movilizaciones sociopolíticas y anticoloniales puertorriqueñas y/o las luchas contra el régimen colonial estadounidense en Puerto Rico, se han visto influenciadas por el surgimiento de movilizaciones por la justicia ambiental. Este artículo sugiere que nuestra comprensión de los movimientos ambientales y anticoloniales puertorriqueños puede ser expandida en la medida que consideramos la realidad sociopolítica y colonial puertorriqueña, así como al enfatizar en el estudio de los procesos sistemáticos e institucionales de criminalización desplegados contra estas

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\* José M. Atiles-Osoria is a Ph.D. candidate in the sociology of law and political philosophy at the Center for Social Studies of the University of Coimbra, Portugal, and the University of the Basque Country, Spain. Carrer Mare de Deu del Coll 60 1ºD. 08023 Barcelona (Spain) [joseatiles@gmail.com](mailto:joseatiles@gmail.com)



movilizaciones sociales. La estructura de este artículo se fundamenta en un análisis tridimensional. La primera parte, describe brevemente la historia colonial de Puerto Rico y el impacto del colonialismo sobre el medioambiente, señalando de esta manera la intensa correlación entre estos dos procesos. La segunda parte describe los mecanismos de represión y criminalización desarrollados por los gobiernos de Estados Unidos de América y Puerto Rico. Finalmente, la tercera parte analiza los conflictos medioambientales puertorriqueños entre los años 1999 y 2012 y muestra como la desobediencia civil en favor del medioambiente fue criminalizada.

**Palabras clave**

Puerto Rico; colonialismo ambiental; criminalización; protesta social y justicia ambiental

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## 1. Introduction

At the outset of the 1990s, mobilizations for environmental justice started to play a central part in the Puerto Rican colonial and sociopolitical imaginary. This resulted from several processes that started in the 1960s and have continued in contemporary Puerto Rico (PR). These processes were intended to raise public awareness about the importance of protecting the environment. The environmental claim has been incorporated into the array of multiple and complex struggles for the decolonization of PR. The convergence of socio-environmental and political struggle gains traction if we recognize that colonialism, in its fundamental manifestation, implies the exploitation and extraction of minerals and other natural resources, as well as the plundering of material, cultural and environmental goods from the colonized territory. Accordingly, the struggle for decolonization and the movements for environmental justice<sup>1</sup> cannot be understood independently from one another, but rather must be studied through the lens of a common analytical framework.

In response to the joint campaign for environmental justice and decolonization, the governments of the United States of America (U.S.) and PR have deployed numerous mechanisms of repression and criminalization against Puerto Rican socio-environmental movements. Two repressive strategies can be identified throughout the history of environmental conflicts in PR: an initial period of repressive methods set out to deter the advancement of anticolonial movements from the 1960s to 1990s; and beginning after September 11, 2001 (9/11), a second period characterized by the use of laws specifically designed to halt and delegitimize environmental movements. A clear example of this second type of regulations is the Patriot Act, which has extended to the current moment. We are currently witnessing the advent of strategies and discourse to categorize socio-environmental protests as eco-terrorism. This has produced a new wave of tension in the Puerto Rican colonial conflict, creating a rise in state terrorism and the destruction of the ecosystem.

This analysis of resistance strategies and the criminalization of socio-environmental struggles in the colonial case of PR is carried out in three sections. In the first section, a brief contextualization of the Puerto Rican colonial condition is developed, while key discussions are also introduced concerning the concepts of "environmental colonialism" and its social, political and legal implications. The second section is dedicated to the study of the concepts of criminalization, repression and eco-terrorism. At the same time, this area presents an overview of the various methods of repression and criminalization implemented by the governments of the U.S. and PR against the socio-environmental movements. Special emphasis within this section is placed on the post-9/11 movements and the effects that the "War on Terror" has had on the criminalization processes against these movements in PR. Finally, in the third section I will provide a brief summary

<sup>1</sup> In the light of the pioneering studies of Concepción (1998, 1995), Baver (2006) and Valdés Pizzini (2006), in this article I will use the concept of environmental justices as an umbrella category for a diversity of mobilizations for the protection, preservation and decontamination of the environment. These Puerto Rican authors agreed that from the 1960s onwards, Puerto Rican society has experienced the development of a discourse about environmental justice that can be read under the light of the "right" to a safe environment, free of pollution and which can guarantee the wellbeing of the communities. This "right" has been claimed through different strategies, such as legal mobilization and social protest, with the U.S. and PR governments having been considered primarily responsible for ensuring this right. In this sense, is my consideration that the concept of "environmental justice" play a central role in the conceptualization and definition of the struggle for the decolonization and for social justice in a colonial context such as PR, where manifestations of environmental colonialism can be found. However, it is important to acknowledge that the uses of this concept operate at a theoretical level, although at the grassroots level, the socio-environmental movements, despite claiming environmental justice, describe their mobilizations in concrete terms (such as struggles against the pollution or against the concrete projects). Thus, the concept of environmental justices will be used in this paper as a theoretical or analytical category that aims to piece together a greater diversity of environmental struggles.

of the most relevant movements from the 1960s to 1999, with this period revealing the processes through which the Puerto Rican environmental movements were formed and organized. Subsequently, I take an in-depth look at the socio-environmental movements developed between 1999 and 2012, as well as the processes through which they have become major players in the sociopolitical life of PR. Finally, I will describe the different contemporary mechanisms of criminalization carried out against the Puerto Rican socio-environmental movements by the government of PR.

This article is based on the results of a historical and ethnographic research conducted with the Puerto Rican anticolonial and socio-environmental movements between 2008 and 2012<sup>2</sup>. This empirical study was based on three techniques of data collection and analysis: document and historical analysis; participant observation; and in-depth interviews with members of the Puerto Rican anticolonial and socio-environmental movements. Following the results and the historical analysis, this article sets out two central arguments demonstrating, on the one hand, the close relationship between the struggle for independence and the socio-environmental movements, arguing that the former cannot be understood without the latter, in the colonial context; and on the other, the specific developments of practices for the repression and criminalization of socio-environmental movements in the colonial case of PR.

## 2. Environmental colonialism in Puerto Rico

PR is a Caribbean archipelago, which comprises one major island, the island municipalities of Vieques and Culebra and a series of smaller islands. It is a predominantly urban country of 3,435 square miles (5.528 km<sup>2</sup>), with a population of 3.8 million inhabitants. Despite its urban character, PR possesses important natural reserves and mineral resources, an excellent supply of potable water and fertile soil and, most importantly, great biodiversity. With its strategic geopolitical positioning at the entrance to the Caribbean Sea, this has rendered it subject to key colonial interest, explaining its more than 500 years under colonial rule, with the most recent 115 years under the U.S. domain. This condition of colonial subordination, which extends from 1898 to the present (2013), has brought about several economic, environmental, sociopolitical and legal consequences.

In economic terms, the country can be seen as devoid of its own economic agenda and traditionally dependent on the interests of its colonizer. This condition is exemplified by the various models of economic development imposed over the last hundred years without any significant attainment of their anticipated results. One such example is the set of radical economic transformations suffered by the island during the opening decades of the twentieth century, resulting in its agricultural shift from being essentially self-sustaining to a monoculture producer of sugar cane. Subsequently, beginning in 1940, the imposition of an industrial model commonly known as Operation Bootstrap (Dietz 1989) favored the economic hegemony of U.S. industries, as well as the establishment of the textile industry and petroleum refineries (Concepción 1995). A new economic transition model emerged in the 1970s to promote the pharmaceutical and technology markets. Subsequently, at beginning of the 1990s, the island's economic model changed from one of production to consumption. This change brought about agricultural underdevelopment and the forsaking of all previous economic models, apart from pharmaceuticals and electronics.

The previously described economic underdevelopment coincided with the beginning of the process of militarization triggered by the U.S. in the 1940s, which resulted from the Cold War. This process, which was extended throughout the Caribbean

<sup>2</sup> This research took place as part of my Ph.D. dissertation "Colonialism, Law and Resistance: A study of the role of law in the Puerto Rican colonial conflict" developed in the Center for Social Studies of the University of Coimbra, Portugal.

region (García Muñiz and Vega Rodríguez 2002), led to the expropriation of numerous agricultural zones to establish military bases, areas for military maneuvers and the storage of weaponry (McCaffrey 2006). This militarization weakened regions with the potential for agricultural and socioeconomic development and increased the levels of contamination and environmental deterioration as result of the military maneuver in Vieques and Culebra islands<sup>3</sup>. Simultaneously, it also spawned the emergence of diverse social movements for the return of expropriated land and the cessation of military activities (Baver 2006).

The sociopolitical and legal effects of U.S. colonialism are extensive. In the political-legal arenas, the colonial condition has brought about an area of political-legal exclusion traceable to the terms of a state of exception (Atiles-Osoria 2012), namely the establishment of a space of political-legal exclusion where certain U.S. constitutional rights are in force, but within which not all citizens are covered. The most telling example is that, even when U.S. citizenship was imposed upon the people of PR in 1917<sup>4</sup>, these citizens were not granted certain rights, such as voting for representatives in the U.S. Congress, voting for the U.S. President and the extension of certain U.S. federal government aid and benefits. The fact that these rights are not recognized is based on the situation of PR under the Territorial Clause<sup>5</sup> of the U.S. Constitution and the developments of two arguments under the heading of Insular Cases<sup>6</sup>, the first of which states, "PR belongs to the U.S. but is not part of it." This designates PR as property and/or provides a mercantilist view of colonial dominion over PR. The second argument builds upon the premise that Puerto Ricans are "foreign citizens in a domestic sense" (Rivera Ramos 2001). This means that U.S. citizens born and living in PR will be considered as second-class citizens for a number of U.S. administrative and political areas, such as those aforementioned civil rights. Both of these arguments have led to the creation of a state of exception and/or the administration over this area by means of the denial of constitutional rights and guarantees possessed by citizens, which are denied under several exceptional legal devices (Atiles-Osoria 2012).

This political-legal exclusion brought about the imposition of unique political categories concerning this territory, causing a high level of social conflict. The most paradigmatic of these territorial categories is the designation of the Commonwealth of Puerto Rico in 1952. With the creation of this new legal-political category, a semi-democratic system of government was established in PR, based upon a local Constitution and a republican-liberal system of governance. Nevertheless, while the U.S. attempts to give the impression of PR having reached the maximum degree of local sovereignty, the reality is that the U.S. government has never handed over the sovereignty of PR to the Commonwealth of PR and the Puerto Ricans; rather, it remains in the hands of the U.S. Congress (Rivera Ramos 2001). This legal contrivance has led to the perpetuation of colonial status with the approval of a considerable part of the country, the international community and particularly the United Nations (UN). Thus, PR has remained under a certain level of invisibility to the rest of the international community (Atiles-Osoria 2012). Meanwhile, the aforementioned social conflict is reflected in the high level of sociopolitical

<sup>3</sup> As Berman Santana (2002, 2010) has shown, the environmental pollution produced by the U.S. Navy military practices in Vieques and Culebra have had important consequences in terms of the social and economic development of these islands. Moreover, the author has shown that the highest level of cancer and other chronic diseases can be found in these islands, compared to the rest of the Puerto Rican territory, with the suggestion that this is due to the long history of military practices (sometimes with depleted uranium) conducted by the US Navy.

<sup>4</sup> This was possible under Jones-Shafroth Act, Pub.L. 64-368, 39 Stat. 951, enacted March 2, 1917.

<sup>5</sup> Article IV, Section 3, Clause 2 of the Constitution of the United States.

<sup>6</sup>The Insular Cases are a series of cases brought before the U.S. Supreme Court between 1902 and 1922, in which the legal status of PR was established. Furthermore, aspects related to the citizenship of the Puerto Rican people, the national and international nature of political-legal matters concerning PR, and matters related to commerce and education were also decided in these rulings. In summary, these rulings produced the true legal status of PR and constituted the set of legal norms that positioned the U.S. above PR and the Puerto Rican people (Rivera Ramos 2001, Venator Santiago 2006).

polarization among the pro-annexation sector, those who defend colonial status and demand independence for PR.

Looking more closely at PR's resistance to colonial subordination, several movements have struggled for the country's self-determination. These anticolonial organizations have mobilized in distinctive ways, including struggles in the international arena, the UN and its Committee for Decolonization; sociopolitical mobilizations on the colonial legality; movements involving the electorate; the filing of legal proceedings in Puerto Rican, U.S. and international courts; and an armed struggle for independence. All such movements have contributed to sustaining social, political and legal achievements and, above all, preserving PR's national identity.

On the other hand, these struggles have incurred high levels of repression and criminalization by the governments of the U.S. and PR. The instruments of repression and criminalization will be amply shown throughout this article. For the moment, the most important task is to underscore that these practices of criminalization have not managed to deter the Puerto Rican movements for independence and social justices.

### *2.1. Environmental colonialism*

The despoiling of natural resources, the extraction of wealth (mineral, human, biological and energy-related) and the destruction of the natural environment have traditionally been considered early manifestations of colonialism. This fundamental dimension of colonialism, designated by Mattei and Nader (2008) as "plunder", is demonstrated by the authors through the analysis of the distinct historical processes of colonization and domination carried out around the world by the West or the Global North. At the same time, the history of colonial practices shows that this despoliation of resources is based on a biopolitical<sup>7</sup> apprehension of nature. This means that geopolitical and colonial traits only come in force to the extent that there are extractable natural, human and mineral resources in the territory. It can be argued that the geopolitical purpose of colonialism is subordinated to *bios* and the possibilities for economic enrichment by the exploitation of *life* or that of the natural, mineral and human resources.

In PR, the plunder of resources that results from capitalist colonial relations imposed by the government of the U.S. coincide perfectly with the aforementioned phenomenon. In this sense, Concepción comments that,

"The environmental degradation in Puerto Rico has been called 'environmental or ecological colonialism'. This concept refers to the exploitation of natural, renewable resources: the disposition of toxic wastes into the air, land and water from production activities [...] the environmental colonialism sprang up as a result of the placement on the island of technologies with elevated levels of energy consumption and contamination. The problem is that the renewable resources excessively used and depleted are essential elements not only for production activities but also for all forms of life. Consequently, biological survival is as much at risk as economic survival [...] This policy can be considered a new form of subordination and oppression" (Concepción 1988, p. 128<sup>8</sup>).

As can be observed in the above citation, there is a difference between colonial extractive practices and environmental colonialism. It is a differentiation based on the strategic and ideological character of environmental colonialism. While the

<sup>7</sup> Following Foucault's (2009) and Agamben's (1998, 2005) works, in this article I will use the concept of biopolitics to designate the politics base in the administration of the production and reproduction of the life. Thus, unlike the geopolitics that have been base in the control and administration of the territory and its resources, by biopolitics I refer to the control of the population, the reproduction of the cultural practices, ideologies and knowledge. Finally, by the biopolitical apprehension of the nature, I am referring to the inclusion of the biological life (what Agamben (1998) has called zoe) in politics and contemporary economics, as an element to be controlled, administered and marketed.

<sup>8</sup> My translation.

practices of the extraction and plunder of resources imposed by colonialism are based on domineering, violent strategies where those subordinated receive nothing in return, environmental colonialism functions as an ideological system of exploitation. Environmental colonialism works in planned and legitimated ways and, to some extent, with the consent and participation of national economic elites. With this cooperation, the extraction, contamination and destruction of the environment becomes lawful in exchange for the promise of certain recompense. In this manner, a system for the management of natural and mineral resources is established, from which the country and its economic elite will receive benefits. Thus, with the promise of "development, progress and modernization", important quantities of natural resources are sacrificed. Environmental colonialism is not limited to the exercise of power over a colonial territory, but also involves a sociopolitical and legal structure that grants the authorized exploitation of resources.

This political-legal structure of environmental colonialism finds new support in neoliberal writings about the environment. Neoliberalism considers natural resources "products of consumption", rendering them marketable, interchangeable and capable of being financed (which means the commodification of nature). Smith affirms that,

" [...] intensified commodification, marketization and financialization of nature is of course an integral element of a much larger project of neoliberalism. Neoliberalism's substitution of private market economic measurement for social calculation, and its insistence that anything of social worth must be tradable in the global market, applies precisely to the emergence of new markets in ecological commodities, mitigation banking and environmental derivatives" (Smith 2009, p. 5-6).

Here, we are confronted with a market version of "nature", which, as Bakker (2010) suggests, develops a new neoliberal geography, namely the redefinition of global geography based on the resource available and the possibilities of its extraction and commodification in the global market. In this sense, the environmental colonialism is reinforced as it develops new strategic control and domination in unforeseen areas, such as the cases of biopiracy; the massive purchase of farmlands in the Global South by transnational corporations; the emissions or CO<sub>2</sub> trading; and other contemporary practices of the acquisition of wealth from the exploitation of nature. All these neoliberal manifestations of environmental exploitation and its commodification exemplify what Nixon (2011) has termed *slow violence*<sup>9</sup>.

Faced with this biopolitical, political-legal and neoliberal reality of environmental colonialism, it is not uncommon to find intense bonds developed among the anticolonial movements fighting for the environmental justice. The intense tradition of anticolonial struggles has shown that freedom from biopolitical domination is equally important as freedom from geopolitical domination. For the anticolonial forces, it is not enough to liberate their territory from the violent domination of the colonizer; rather there has to be liberation from all forms of colonial power, including those that involve the colonized people with their natural environment.

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<sup>9</sup> Slow violence also involves the confluence between the plundering of resources, the environmental contamination, the policies of economic development and the development of policies for the control, repression and criminalization of the socio-environmental movements. Nixon (2011) shows that States (mainly those of the Global South) and multinational corporations (and in consequence the governments of the Global North) have made intensive use of violence (physical and symbolical) to thwart socio-environmental mobilizations in the Global South. From Nixon's (2011) analysis, it can be deducted that the design and uses of repressive and criminalization measures against that socio-environmental movements are products of the intersections among the economic-global power and the local-neocolonial power. Thus, this means that the environmental colonialism is underpinned by violence, the invisibilization of Otherness and the development global mechanism of criminalization that are mainly applied in the Global South.

### 3. From criminalization to eco-terrorism

The processes of the cooptation and delegitimization of social movements can be defined according to two paradigms: one the one hand, the use of political/physical/symbolic violence to deter, intimidate and demobilize organizations that question the authority of the state; and, on the other, the use of law and legal discourse as mechanisms to delegitimize these organizations.

The first paradigm falls under the category of repression. It is a mechanism that implies the use of state violence, or violence on the part of pro-government organizations such as vigilante groups or pro-state terrorism organizations (Rolston 2006). Under the heading of repression, I also include the use of surveillance, persecution and coercion, which are at the margin of the law and/or whose legality can be questioned. Certainly, in the case of PR, I am referring to the practice of *Carpeteo*<sup>10</sup>, the infiltration of state agents, surveillance, recordings, photography and other means of symbolic violence into sociopolitical movements. Likewise, I include under the category of repression violent acts such as kidnapping; disappearances; political assassinations; attacks with explosives and weapons on property (homes, offices, vehicles, businesses) of pro-independence militants and their organizations; the militarization of public spaces; the use of excessive force by police; among others<sup>11</sup>. Broadly speaking, many of these tactics fall within the framework of state terrorism, which must be understood in its Puerto Rican context as "colonial state terror"<sup>12</sup>.

The second paradigm falls within the category of criminalization. This refers to the use of the law to thwart and delegitimize sociopolitical organizations, with some examples including the design of special laws<sup>13</sup>, the use of courts to resolve situations of a political nature, the imprisonment of political actors<sup>14</sup> and the delegitimization of organizations through either positive law or legal argumentation. Regarding this last point, I refer to the use of official state discourse to establish that a given organization is "criminal, subversive, or terrorist", despite the fact that these accusations have not been proven in court. In other words, through the use of official state discourses as means for the criminalization, the development of campaigns for delegitimization against the antagonistic forces can be found.

In her analysis of the repression experienced by the Puerto Ricans who struggled against mining companies in the 1970s, Concepción (1995) shows how this issue led to delegitimization strategies and how they worked in the PR cases. This Puerto Rican author maintains that two strategies were adopted for this effort: "attempts

<sup>10</sup> Carpeleo was a surveillance program developed by the Intelligence Division of the Polices of PR between the 1930 and 1990, involving the continued vigilance of members of independence organizations, socialists and other social organizations (such as environmental). In addition to this monitoring, there was a process of profiling and recording a dossier containing all personal information of the monitored, including photos and information provided by informants and neighbors. This operation was similar to the COINTELPRO (Counter Intelligence Program), which was established by FBI. For a detailed discussion, see Bosques Pérez and Colón Morera (1997).

<sup>11</sup> For a detailed chronology of the repression against the movement for Puerto Rican independence, see Paralitici (2011). For an analysis of its sociopolitical and legal character, see Atiles-Osoria (2012).

<sup>12</sup> With the concept of the colonial state terrorism, I aim to show that repressive and criminalizing processes of the anticolonial movements are complex and involve joint action by various political actors. This concept implies taking into consideration the state and pro-state political violence as an intrinsic manifestation of the colonial conflict. At the same time, it also involves recognizing the discursive hegemony deployed by the U.S. and Puerto Rican governments, which has made political violence scarcely delegitimized by the Puerto Rican society. As result of my previous research (Atiles-Osoria 2012), I have identified that the political effectiveness of the ontopolitical state of exception and the processes of criminalization and repression have made most of the terrorist actions of the colonial state terror remaining unpunished. In this sense, I will use the concept of state colonial terror as an analytical category that allows me to show the complexity of the political violence, repression and criminalization in the Puerto Rican colonial context.

<sup>13</sup> For example, *La Ley de la Mordaza* (Acosta 1998), the reuse of the Sedition Act (Paralitici 2004) and penal categories of criminal law (Atiles-Osoria 2012).

<sup>14</sup> For a chronology of the great number of people jailed during the independence struggle in PR, see Paralitici (2004).

to rally support for the project by asserting availability of pollution-control technology, and attempts to subvert the opposition" (Concepción 1995, p. 119). Regarding the attempts to subvert the opposition, Concepción states:

"[...] the government tried to discredit the opposition and by doing so to divert attention from the issues. Government officials and leading senators focused on the political beliefs of opponents and called them subversives, while downplaying their concerns as primarily politically motivated. An editorial of the newspaper *El Mundo* explained the opposition by pro-independence interests and organizations as 'narrow nationalism of those who do not want US companies on the island, rather than fair reasons'. (Concepción 1995, p. 120).

Alexis Massol<sup>15</sup> emphasizes the following:

"During the first 15 years of the struggle against the mines we experienced a different kind of repression; it was subtle, no beatings, no arrests, but instead, knowing that we worked within the community, what they did was send their people from house to house throughout the community. Later, we would talk with one of them and we would hear that 'the police came to visit me and they said you are communists, you are subversives, and we should not deal with you'. We were in a struggle against the mines, but really it was against the colonial system."

As revealed by these two quotes, the persecution and repression of the environmental movements were as prevalent in these movements as in the anticolonial movements. It is also important to underscore that the repressive tactics presented by Concepción (1995) and Massol have constituted a pattern of action in multiple environmental conflicts up to the present day. As will be seen in other cases discussed in this article, the level and intensity of repression grows or shrinks depending on the intensity with which the environmental movements challenge the state and its environmental policies. It is in this sense that the struggle to expel the U.S. Navy from Vieques and Culebra will reflect the point of convergence, in which the socio-environmental movements and anticolonial movements experienced the highest level of repression and criminalization.

Finally, the Patriot Act was enacted as a result of the development and configuration of repressive practices in the U.S. following 9/11. Vanderheiden (2005, 2008) argues that the climate created by the enactment of the Patriot Act prompted public opinion and the mass media to incorporate the concept of eco-terrorism as a means of criminalizing "ecotage and/or economic sabotage". According to Vanderheiden (2005), economic sabotage is a means of resistance through actions against inanimate objects. This designation applies to political action intended to stop the advancement of a project that directly affects the environment, even when what is undertaken does not affect human life, the environment and other installations that provide basic services to the civilian population. These are tactics traditionally employed by armed movements of an ecological nature, which became popular during the 1980s. This change in the designation of ecotage has provided the state and other economic interests carte blanche to act directly against ecological movements in the U.S., even when their actions would not usually be categorized as terrorist acts.

Ecotage has scarcely been a factor in the context of socio-environmental struggles in PR. Indeed, in my research, I have only identified one such instance in the 1990s<sup>16</sup> whereby this tactic was employed. Rather, the tactic most commonly employed by Puerto Rican socio-environmental groups has been that of peaceful civil disobedience<sup>17</sup>. In other words, contrary to what Vanderheiden (2005)

<sup>15</sup> The leader of the environmental movement and community project entitled *Casa Pueblo*, whom I interviewed on December 26, 2011 as part of the fieldwork for my doctoral thesis.

<sup>16</sup> I am referring to the sabotage by the armed organization called *Ejército Popular Boricua-Macheteros (EPB-M)* of machinery and plumbing materials destined for the construction of the *Superacueducto* on March 31, 1998 (Gonzalez Cruz 2008).

<sup>17</sup> Puerto Rican sociopolitics and socio-environmental movements have defined civil disobedience as those pacific mobilizations that attempt to revoke and delegitimize laws and public policies that are

presented, it has not been ecotage that has been equated with terrorist acts in PR; rather, the occupation of construction projects has been designated as such.

As it will be shown in this article, the practices of criminalization and repression implemented against the socio-environmental movements have transformed the extent to which these movements have come to play a central role in the Puerto Rican politics. At first, one of the most important aspects of this transformation is that the repressive practices and criminalization efforts between the 1960 and 1990 assumed the same patterns as those employed against the pro-independence movements. However, from the 2001 onwards, the U.S. and PR government has begun to design a specific mechanism of repression and criminalization against the environmental movements. This is most important expression since 2011 when the PR government created a specific law that criminalized the socio-environmental protest. In what follows, I will develop an historical analysis that allows me to illustrate the transformation of both the socio-environmental movements and the mechanisms of repression and criminalization applied against them.

#### 4. Puerto Rican socio-environmental struggles

The environmental movements in PR can be studied in two periods: those carried out from the 1960s through the 1990s, and those that have taken place from 1999 to the present. This periodization is based on the configuration or organization of the environmental movements and the tactics of repression and criminalization used by the governments of the U.S. and PR.

Generally speaking, the first environmental struggles to take place in PR can be understood from two principal standpoints: first, those that oppose specific projects designed by the governments of the U.S. or PR. Two examples of opposition to U.S. projects are the movement for the preservation of the Lajas agricultural valley in the 1990s, and the struggle to expel the Navy from the island municipalities of Vieques and Culebra (from 1960 to 2003) (Barreto 2002, McCaffrey 2002). Examples of movements against projects proposed by the government of PR include those against the mining companies from 1960 to 1995 (Concepción 1995), as well as those undertaken against the construction of the *Superacueducto*<sup>18</sup> in the 1990s (González Cruz 2008).

Second, there are struggles for access to and democratization of resources. In this instance, I principally refer to the "urban development" projects proposed by the economic elite and which are carried out with the consent of the governments of the U.S. and PR. Some of the related movements are the opposition to the privatization of the beaches, better known as "*Las Playas pal' Pueblo*" (Beaches for the People), which has occurred from the mid-1960s to the present (2014); the movements in favor of the conservation and preservation of forests and wetlands (Concepción 1988); and movements against speculative urban projects, such as construction along the shoreline.

I find two very interesting phenomena in these cases: on the one hand, the majority of these movements are carried out by community or neighborhood organizations, which, in one way or another, receive support from political groups (mainly anticolonial movements); and on the other, I find greater use of the law by both the environmental movements and the "developers" or investors as a strategy to advance their interests. However, this does not imply that the latter are depoliticized movements (or devoid of sociopolitical content expressed in

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understood as in violation of the human and civil rights of the Puerto Rican community through strategies such as the symbolic occupation of sites (such as buildings, lands and other properties of the U.S. and PR governments), sit-in demonstrations in public building, non-recognition of Federal Courts in PR and some U.S. and Puerto Rican laws and the use of international law.

<sup>18</sup> The *Superacueducto* is a water distribution system that traverses the northern part of the island, supplying the capital city of San Juan and the metropolitan area with water.

antagonistic terms). In these antagonistic spaces, the law and legal discourse are articulated both in the sphere of resistance and to advance economic interests.

In the same vein, a transformative or transitional process occurred in the 1990s and 2000s, in both the socio-environmental movements and the means of repression and criminalization. In this context, even when they maintain their anticolonial nature, the socio-environmental movements come to play a central role in the Puerto Rican sociopolitical imaginary. One of the most important characteristics of contemporary Puerto Rican socio-environmental movements is their ability to unite and mobilize the various local, social, political and legal groups. This ability to act is exemplified in the second wave of movements intended to expel the Navy from Vieques (1999-2003), whereby, in addition to the anticolonial forces, civil society and the socio-environmental groups played a central role (Barreto 2002, McCaffrey 2002).

Nonetheless, it is important to stress that the practices of repression and criminalization on the part of the U.S. and Puerto Rican governments also underwent transitions and transformations during this same period. The language and repressive tactics during the first period continued to change as the environment movements' initiatives became stronger. During the transition between the start of the second period in 1999 with the struggles over Vieques to the subsequent terrorist acts of 9/11, new repressive strategies were used, as well as new categories of criminalization and delegitimization against the anticolonial and socio-environmental movements. Therefore, I focus on a detailed analysis of this second period and the accompanying mechanisms of criminalization.

#### *4.1. "Paz para Vieques" (Peace for Vieques)*

On April 19, 1999 the U.S. Navy was conducting military maneuvers on Vieques when a bomb dropped from one of its planes and fell on the lookout post where David Sanes Rodriguez, a civilian employee of the Navy, was working. His death was the spark that ignited the second period of movements to oust the Navy from Vieques.

This struggle ran from the time of the Navy's maneuvers in April 1999 to May 2003 and symbolized one of the most important sociopolitical episodes of the Puerto Rican people. Such importance is not only derived from the fact that the Navy left Vieques, but also because it involved the uniting of different levels of action and solidarity among the most diverse sectors of the country and the international community. This confluence falls under the heading of civilian society. In PR, the civilian society refers to the combined action of anticolonial, socialist, environmental, religious, political parties and grassroots or community movements (Baver 2006, McCaffrey 2006).

In general terms, this new effort to expel the Navy from Vieques symbolizes the closure of the strategic and ideological transition, which began in 1990 with the mobilizations for the Lajas Valley and against the Navy in Vieques (González Cruz 2008). In broad terms, the new movements to oust the Navy from Vieques involved carrying out civil disobedience in the areas that the Navy used to conduct its maneuvers. Following the example of the fishermen from Vieques and Culebra (who, from the 1940s, would confront the warships with their small boats to sabotage the maneuvers taking place there), the civil disobedience movements peacefully defied the Navy and its practices. Consequently, thousands of people united in the name of the 9,000 inhabitants of Vieques living in the zone of these maneuvers, against the environmental contamination and for the return of this territory that belonged to PR to put an end to these military maneuvers (McCaffrey 2002). Similarly, with the slogan "Peace for Vieques, Get the Navy out of Vieques, and PR United for Vieques," more than 100,000 people marched through the streets of San Juan on February 21, 2000, demanding the immediate withdrawal of the Navy.

Confronted by this struggle to oust the Navy, the demonstrators' organizational capabilities and the solid support of the citizens and the international community<sup>19</sup>, the Navy and government initiated a new repressive campaign against the demonstrators. On May 4, 2000, a large number of federal agents began to arrest the pro-Vieques activists and dismantle the large number of civil disobedience camps that had been installed in the target zones. In total, 2,000 persons were arrested between 2000 and 2003 for acts of civil disobedience (Paralitici 2004). They were all processed in the U.S. Federal Court in PR, with their sentences ranging from hours to several years (Paralitici 2004). It is interesting to note that this type of action is considered a minor infraction in the U.S. itself, mostly resulting in a warning or monetary fine, although the colonial nature of PR allows this kind of excess to continue (Susler 2002). Likewise, many of those imprisoned denounced various mistreatments as violation of their human and civil rights, such as detention for extended periods under the hot sun, incarceration in poorly constructed cages, transport on barges, being chained together without life-jackets or any other kind of protection and the prolonged denial of water or food (Reveron Collazo 2002).

The treatment given to those expressing civil disobedience over Vieques was affected by 9/11. Once the Patriot Act was approved and the discourse that equated social and environmental protest with terrorism intensified, those conducting civil disobedience received longer prison sentences. These events produced a certain "cooling-off" in the effort to expel the Navy. Since the U.S. security discourse and repression were intensified, many sectors that were linked to the Vieques struggles reduced their commitment and intensity. This can be exemplified by observing the attitude assumed by the administration Sila M. Cardero-PPD<sup>20</sup>, who, after claiming the immediate exist of the Navy from Vieques, accepted the Navy exit in 2003 (as agreed Rossello-PNP<sup>21</sup> Clinton-D administrations).

Finally, as a result of the Navy' exist from Vieques, three important phenomena came about on May 1, 2003: first, the celebration of the triumph won by the people in this struggle; second, a group of activists destroyed two vehicles and one security station as part of the celebration activities,, resulting in the arrest of demonstrators and the start of a criminalization campaign in both the media and the legal system, which resulted in sentences in federal prison from three to six years; and third, it marked the beginning of the third stage of the struggle for Vieques, signaling the new movements for cleaning, decontaminating and returning the areas previously occupied by the Navy. The significance of this stage is that these areas were transferred to the U.S. Fish and Wildlife Service and the Conservation Trust without being decontaminated. It is fundamental to note that the future development of Vieques largely depends on the clean up and decontamination of areas affected by more than 40 years of military activity.

#### *4.2. From Vieques to Paseo Caribe*

Given the positive results in the struggle to expel the Navy from Vieques, the subsequent struggles for environmental justice and against the colonial environment that began in 2003 have assumed similar organizational models, involving diverse sectors taking action to present a unified front. This model was used in opposition to the construction of a luxurious housing complex known as *Paseo Caribe* in 2007. Proposed by locals' elite and the transnational company Hilton Hotels, this project envisioned the construction of a new residential building

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<sup>19</sup> It must be underscored that the UN's Committee on Decolonization came out in favor of the immediate withdrawal of the navy from Vieques in 2000.

<sup>20</sup> PPD comes from the Spanish "Partido Popular Democrático" (Popular Democratic Party), the Puerto Rican pro-status quo party.

<sup>21</sup> PNP comes from the Spanish "Partido Nuevo Progresista" (New Progressive Party), the Puerto Rican pro-statehood party.

on the shoreline of Condado, San Juan, PR. It jeopardized the *Fortín de San Jerónimo*, one of most historically important structures in the zone, and simultaneously proposed privatizing the access to a historic monument of the Puerto Rican government and blocking access to beaches.

In the face of inaction on the part of the Acevedo Vila-PPD administration, society became organized to defend beach access and the historic monument. The opposition to this project was conducted by means of civil disobedience, through popular demonstrations, as well as the incorporation of legal discourse over the possible alternatives to this project. The best example of the legal discourse is the creation of the People's Court on November 16, 2007, within which the legality, ownership and desirability of the project were assessed. At the same time, it also evaluated the possible violations on the part of the developers, producing the "judgment" that established that: "the project violated laws pertaining to public policy, zoning and the environment, among other infractions." (Primer Tribunal del Pueblo)

Although no significant campaign of repression or criminalization procedures resulted from these mobilizations, the protests and opposition to this construction and the occupation of adjacent areas by ecological groups served as an excuse to propose a new law to criminalize this kind of protest in 2009. This law, which will be discussed below, is part of a new neoliberal conception of social protest and civil and political rights, signaling the continuation of the neoliberal, environmental politics developed in the 1990s.

#### *4.3. The state of emergency over energy and new patterns of criminalization*

As has been observed throughout this article, to the extent that political and economic interests redirect their focus and/or priorities, new proposals and public policies relating to the environment have been introduced. In this sense, the Puerto Rican government has been developing new public policies that directly affect the environment since 2009. As a consequence, PR is experiencing the appearance of new socio-environmental protests and changes in the patterns of the criminalization of these movements. The new public policies concerning the environment have had two concrete, large-scale political-legal effects: the declaration of a "state of emergency over energy"; and the enactment of laws specifically directed at criminalizing socio-environmental protests.

With the advent of the neoliberal administration of Fortuño-PNP, the opinion has arisen that PR is living under a "state of emergency over energy"<sup>22</sup>. The declaration of this state of emergency took effect under Executive Order OE2010-034<sup>23</sup>. It established that the necessity of seeking alternative sources of production that cost less, are "environmentally friendly" and renewable, given that PR depends on the combustion of petroleum derivatives for 70% of its electrical energy production (implying a high level of contamination), which has high production costs due to market fluctuations and is also non-renewable. The Administration of Energy Affairs was created to confront this situation, developing a program for finding alternatives to the existing situation<sup>24</sup>.

Up to this point, one might agree with the energy, socio-environmental and economic problems that dependence on petroleum consumption represents. Likewise, one might agree with the need to identify alternative energy sources. Nonetheless, the declaration of a state of emergency has several sociopolitical and

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<sup>22</sup> The declaration of a state of emergency due to energy was declared together with the fiscal state of emergency in 2009. Both these declarations show the push that the current administration is making for an authoritarian government and/or a government that does not follow democratic patterns of governance.

<sup>23</sup> Spanish version of this law (Gobierno de Puerto Rico 2011)

<sup>24</sup> More on this new agency can be consulted from their webpage: <http://www.aae.gobierno.pr/> [Accessed 23 January 2014].

legal implications that warrant our attention. It must be noted that a state of emergency opens the door to new decisions of a unilateral nature that affect the country's future regarding energy, the environment, sociopolitics and the economy, without consulting the citizenry; therefore, the potential direct effects of such an imposition for some communities would be rendered invisible. This element of exceptionality ratified in Law number 32 of March 14, 2001, in which an amendment was passed to Article 12 of Law number 76 of May 5, 2000, marks a new sphere of political-legal action that had previously been limited to problems of a political nature. In other words, the state of emergency/exception had previously been reserved for situations in which the rule of law is placed in jeopardy due to civil uprisings, revolution or warfare (Agamben 2005, Atiles-Osoria 2012)<sup>25</sup>. Therefore, the declaration of a state of emergency due to energy is a new application that allows its declaration in the case of a problem that does not threaten the colonial administrative structure.

Resulting from the declaration of the energy emergency, several projects of great environmental impact were proposed by the Fortuño administration. Among these, I will highlight the following: 1) the reconversion of power plants from oil to natural gas; 2) the creation of a natural gas pipeline that will transport gas from the south to the north of the island, traversing 96 miles and affecting ecological, phreatic, archeological and residential zones of high importance; 3) the construction of waste incineration plants in the north side of PR; and 4) the installation of windmills in mostly agricultural areas.

All such proposals have caused a series of socio-environmental movements of great importance, perhaps the most relevant of which have been those opposed to the construction of the gas pipeline. In general terms, these mobilizations reflect additional examples of the melding of actors that unify the socio-environmental struggles. Examples of the various actors who participate in these movements are the Casa Pueblo organization, grassroots and community organizations and pro-independence organizations.

In another vein, these neoliberal environmental policies have brought about the enactment of laws specifically intended to criminalize demonstrations against projects with an environmental impact. Law number 158 of October 29, 2010<sup>26</sup> establishes within its text that it also serves to add a new Article 208-A to Law number 149 of June 18, 2004, as amended, known as "Penal Code of the Commonwealth of Puerto Rico", for the purpose of establishing the new crime of obstruction of public works, and for other related ends<sup>27</sup>. The criminalization of socio-environmental protest by means of this new law is affirmed in the following lines,

"All persons having the intention to impede, temporarily or permanently, any construction project, public or private, or the movement of ground that has the permission, authorization or endorsement of the agencies concerned, [ . . . ] will be guilty of a serious crime in the fourth degree."

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<sup>25</sup> In the context of PR, the declaration of a state of emergency by the colonial government implies the solicitation of a particular exceptionality within the colonial regime administered under a permanent state of exception and/or what Atiles-Osoria (2012) has denominated as the ontopolitical definition of a state of exception. In this sense, this declaration of an energy-related state of emergency implies going beyond the legal references that constitute the existence of the administrative colonial apparatus.

<sup>26</sup> This law was enacted together with other laws that criminalize social protests in public services such as education and health. This is the Law number 3 of February 4, 2011, which also adds a new Article 246-A to Law number 149, as amended, known as the "Penal Code of Puerto Rico", for the purpose of classifying as crimes the obstruction of buildings containing public services, teaching institutions, and health services as well as other buildings where government services are offered to the public. In other words, it criminalizes protests, strikes and demonstrations in public institutions offering education and health services. For an analysis of the effects of this law, see Atiles-Osoria and Whyte (2011).

<sup>27</sup> This amendment to the penal code has been popularly referred to as the "Tito Kayak Amendment" in honor of the well-known environmentalist Alberto de Jesus "Tito Kayak". This law is available at: <http://www.lexjuris.com/lexlex/Leyes2010/lexl2010158.htm> [Accessed 23 January 2014].

The classification of the occupation of a public or private work site as a serious crime evidences the effort expended to criminalize and impede socio-environmental protests. It characterizes as a serious crime the kind of protest that is most effective in environmental struggles and civil disobedience. Nevertheless, the legislature legitimizes the design of this criminalization effort, based upon the argument that it is for public safety. This factor is clearly expressed in the preface to the law, where it is argued that the interest of the state is "to protect the life and property of citizens" by preventing these citizens from entering onto lands or installations that are under construction, due to the permanent risk in these spaces that an untrained person could be seriously injured. Clearly, it says nothing about the prohibition of social protests or interfering in projects that are in open violation of environmental laws and consciousness. Immediately after, the preface establishes that:

"[w]ith the present legislation this Legislative Assembly does not propose to restrict the exercise of freedom of expression supported, as much by the Constitution of the United States as by the Constitution of Puerto Rico, of those citizens who desire to express themselves in favor or against public or private construction. On the contrary, this Law should serve to guarantee that the freedom of expression may be exercised within the boundaries permitted by our legal ordinances without infringing upon other vitally important rights such as the right to work guaranteed to construction workers and the property rights of the owners of such projects duly authorized and endorsed by the corresponding governmental agencies.

Accordingly, the law compares the right to free expression, the right to work and property rights. From this comparison, under a neoliberal colonial regime, it will clearly be the right to free expression that is subjugated to property rights and the supposed development and progress. Once more, the criminalization of socio-environmental protests is evidenced when the following new elements are established as criminal:

"(to) Impede the entrance or access of employees, vehicles and other persons, including suppliers of materials, persons authorized by the owner, contractors, or custodians of the property where the work is taking place; (b) Occupy grounds, machinery, or spaces that are part of the construction work or of earth moving; (c) The court, additionally, will impose the penalty of restitution."

I understand that this categorization of civil disobedience and the criminalization of social protest as a serious crime implies the dismantling of the Puerto Rican socio-environmental movements' practices of resistance. This implied and strategic break-up will have the same implications as the determination of eco-sabotage as eco-terrorism under the Patriot Act. Accordingly, this law implies the delegitimization of specific contentious environmental actions; the impossibility of acting against a threat for fear of being accused of a serious crime; and the verification that the Puerto Rican environmental movements have reached such a level of recognition that the Puerto Rican government appears determined to demobilize them through the development of specific criminalization efforts, given that the prior efforts implemented have proved ineffective.

The first persons accused under this new law were a group of six protesters engaged in civil disobedience belonging to the organization *Frente Rescate Agrícola* (FRA). They were arrested on December 15, 2011 while performing acts of civil disobedience (blocking the entrances and the accesses) on farmlands of the southern town of Santa Isabel, where the company Pattern Energy had plans to install 65 windmills of 430 feet in height. These windmills would disrupt at least 145,000 hectares in the Valle Agrícola de Santa Isabel. At present, those accused face a minimum sentence of six months in jail.

This mobilization against the installation of windmills in the Santa Isabel farming valley is a fundamental example of the struggles developed against the neoliberal politics and the state of emergency over energy of the Fortuño administration. Other similar demonstrations include those against the gas pipeline in the North of

the Island and the construction of waste incineration plants in the northern towns of Arecibo and Barceloneta (the town where the highest concentration of pharmaceutical producers in the country is located), and in favor of protecting the northern ecological corridor. These are just a few examples of the kinds of activities that are subject to the new criminalized charges. For now, we know that even though the criminalization projects like the gas pipeline have been defeated by the people and all the administrative requests for authorization required, the Puerto Rican government has nonetheless pushed for its implementation, despite the high risks implied to life, the ecosystem and the health of thousands of citizens.

## 5. Conclusion

In this article, I have described the configuration that has resulted between environmental colonialism and the criminalization of socio-environmental movements. In general terms, it has been shown that the struggles for environmental preservation have been an essential part of the anticolonial struggles. Likewise, I have shown the development of the Puerto Rican socio-environmental movements as independent social forces with ties to other protest groups. The long history of socio-environmental movements not only reveals their tradition of struggle and the central part played by environmental justice in the Puerto Rican sociopolitical imaginary, but also evidences the capacity to resist repression and environmental colonialism.

In terms of environmental colonialism and the criminalization of socio-environmental movements, they all remain key factors in the imposition of the U.S. colonial power in PR. As has been shown, the governments of the U.S. and PR have devised an unending string of mechanisms for repression and criminalization to use against every demand of the Puerto Rican movements. We have seen that these governments have redesigned their repressive measures each time the socio-environmental movements have redefined themselves. In the first period of socio-environmental struggles, these governments implemented the same kind of repression used against the pro-independence movements. Later, when the movement to expel the Navy from Vieques began, they emphasized the strategy of criminalizing civil disobedience. Finally, during the post-9/11 era, acts of sabotage became classified as eco-terrorism, with civil disobedience and the occupation of construction projects that affect the natural environment reclassified as serious crimes in both the U.S. and PR.

These reconfigurations of repressive measures have posed a challenge to the socio-environmental movements that may be expressed along the lines of a question asked by Vanderheiden (2008): how can we mobilize processes of environmental activism in the post-9/11 era? In general terms, this reflects an important challenge in which sociopolitical mobilizations must be redefined in such a way that the noose of repression and criminalization imposed by these governments does not strangle the demands for environmental justice.

Likewise, the colonial anti-democratic system and environmental colonialism imposed by the U.S. and agreed to by the neoliberal government of PR poses yet another challenge to the socio-environmental movements. It is a challenge that bears an implicit question of how to achieve emancipation, not just from all forms of geopolitics, but also from the corresponding forms of biopolitics and environmental colonialism. Until now, the anticolonial and the socio-environmental movements have demonstrated the capacity to advance a new sociopolitical, environmental and economic agenda independent from the forms of power imposed upon the country; however, these movements have faced intense processes of repression and criminalization that have not allowed them to advance in the implementation of their agenda. Therefore, for as long as criminalization, colonialism and environmental injustices exist, there will be movements that raise their voices against colonialism and for environmental justice.

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