

BLOODLINE Podcast

Episode 2: *A Gringo Walks into a Cockfight*

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By: Jesse Sidlauskas

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A week before Christmas one year ago, on the eve of the federal prohibition in Puerto Rico, I visited the island, attending over two days and nights, what may have been the last legal cockfights on U.S. soil.

I say that it may have been the last legal cockfight in the country because Puerto Rican cockers currently have an appeal pending in the First Circuit Court in Boston which challenges the constitutionality of the ban and also argues the cockers were entitled and did not receive due process of law prior to the prohibition. Oral arguments were made earlier this month, and gamefowl community awaits the decision of the court judges.

During my trip, I roamed the streets and beaches of San Juan, and spent the evenings milling about the cockpit watching the fights and meeting people. Without exception, every Puerto Rican I met was aware of the pending prohibition of cockfighting. Most of them had connections to cockfighting. Two of my cab drivers, who did not personally attend the fights, had connections to the sport through relatives and expressed disappointment with the ban. As I rode from my hotel to the arena on the first day, I saw that there was evidence to suggest the Puerto Rican economy needed cockfighting as much as its people—missing street signs, for example, which my cab driver said had vanished during the hurricanes but had not yet been replaced and shuttered storefronts in high traffic tourist areas were just a few indications of the deeper economic struggle the island has persevered in recent decades that culminated in the 1-2 punch of Hurricanes Irma and Rita, the two category 5 storms that wreaked havoc on the island only weeks apart, leaving many residents without clean water and electricity for weeks after. Shortly after my visit, the Commonwealth suffered another natural disaster when a massive earthquake shook the island.

The countries cockfighting industry generates \$18 million in revenue each year, generating 27,000 jobs through indirect and direct influence in Puerto Rico. Legally regulated by law since Puerto Ricans overturned a previous ban on the sport in 1933, the law was upgraded in 2007 to include all aspects of the events from venue construction codes to licensing to spectator conduct and penalties for unauthorized events.

For U.S. cockers old enough to have attended a legal cockfight in the states, let me first say that the experience is different. Like everything I experienced in Puerto Rico, whether it originated

there, or has been adopted into the culture—from food, to customs, to style and art—the Puerto Ricans make it their own, and cockfighting, which has been part of local custom since introduced by the Spanish more than 300 years ago.

Today, the gamecock is the Puerto Rican mascot, but not just any gamecock—a Puerto Rican gamecock, a breed the islanders have adapted over generations with a conformation and fighting style all its own which has the fighting instinct of the bare-heel fighting Aseel breeds of Indonesia with the size and speed abilities of traditional Spanish breeds. Unlike other North American breeds, the Puerto Rican gamecocks don't spend much time fighting in the air. Few blows are wasted. Their strikes are more deliberate and on target, far from the "shot-gun" style some American and modern-day Filipinos prefer.

They put their own signature on things they love. I think that's largely thanks to a sense of local pride in the place, and from what I experienced, and the people I met, that pride wasn't at all misplaced.

The cockfights I saw over two nights at Gallistico Club San Juan—the stadium-shaped cockpit that is marked by its exterior blue neon sign that says "COCKFIGHTS", were single battles. One on one matches, unlike the tournament style derbies.

During the day, leading up to weigh-in, cockers tote their sleeping birds in carrying sacks over their shoulders into the pit and hand them over to pit employees, along with the fight's wager. The pit employees weigh each bird and assign it a numbered holding stall. The stalls, which line the wall of the upper concourse in the pit, have wooden walls separating the birds, but are Plexiglas on the employee and spectator side, allowing public inspection of the birds at any time.

Prior to each fight, two cockers may enter the heeling area, present their ticket for a bird and fix the postiza over the cock's natural spur. Though artificial, the postiza is designed to imitate a gamecock's natural spur, standardizing the length, sharpness and hardness among competitors. When the postiza is set, the cockers hand the rooster back over to the employees of the pit. When it is time to fight, the employees place the two roosters—matched by weight within a gram or two-- in a divided box under either the blue or red side. The box is mechanically transferred over the center of the pit on a conveyor and lowered into the pit along with the wager money and a sign indicating the bird owners' names. At the signal from the pit-side judge, the box is raised and the birds are free to fight. The fights are capped at 12 minutes each, and a draw is typically given if they reach that time, though the pit-side judge has authority to declare a winner at any point in the fight, and will call a winner when a clear one emerges, whether or not the losing bird shows some signs of life. In the hundreds of fights that I witnessed, his authority on this matter was never disputed.

When a winner is named, the envelope of wager money is given to the winning bird's owner.

As is the custom at cockfights throughout the world and for all of history, wagers among spectators are bonded by a person's word only—a nod of the head, a quick hand signal and eye contact strike an agreement as understood as any written contract. Dozens of these wagers are made per fight, ranging from a few dollars each to thousands of dollars on a fight, all of which are promptly paid in cash in accordance to the pit-side judge's decision. Of the thousands of wagers I witnessed, there was no dispute that I could discern.

You may have noticed that I have omitted the word "gambling" from the above descriptions. As I have mentioned, the house takes no cut from the wagers between bird owners or the ring-side spectators, making it difficult to call the act gambling in both the legal and traditional sense of that word.

The house instead makes its revenue on the spectator's door fee, as well as concession. In the minute or two between fights, as people move about settling their wagers, waiters weave in and out of the seats with trays, delivering and taking drink and food orders from the attached bar and grill. Despite this fact, prior to the event, the house had catered a buffet with arroz con gandules with chicken and pork tamales with cold drinks outside the pit and free and open to the public.

It was as good of food as I ate while I was there, which notably included a Cuban sandwich and shoestring fries with tres leches for desert I had from Orozcós near the beach on Ashford Ave as well as the hot meat and vegetable stuffed empanadas and strong drip coffee from Las Canarias Bakery across the street from the pit.

Inside the pit before the start of the fights, a live band set up out of the way on the upper concourse and played music.

Outside the arena, I met a Puerto Rican woman selling memorabilia, keychains, rooster paintings, bottle openers and stuffed animals. She noted that, while the ban would put her memorabilia sales out of business along with the cockpit, it'd never stop cockfighting. Alluding to the states, she asked: They still fight there, don't they?

I told her that they did, and asked what she'd wind up doing after the ban. She waived a hand, as if to say she wasn't sweating it, "Go back to selling real estate, I guess," she said, explaining that she is a realtor by trade.

A few days prior to my arrival, an animal rights group, started by disgraced former CEO of the Humane Society of the US, Wayne Pacelle, had offered a \$2,500 reward for any information leading to convictions of a cockfight (As an aside, the group's website claims dozens of people took them up on this offer in Guam, though there is no evidence there that anyone has been paid for the information.) I asked her if she'd heard about the reward.

"Yes, can you believe that, \$2,500?"

I wasn't sure what she meant. "Is that a lot?" I asked.

“A lot,” she said. “It’s nothing. \$2,500 for what? Your life? Not that anyone would kill you, but where would you go? Who would take you in?”

Such is the love for the sport on the 100-mile long island, where politicians have been unanimous in opposition of the ban and spoken publicly against it. San Juan city council has adopted policy that forbids city officials from assisting in any cocking-related investigations, a move mirrored by mayors elsewhere.

San Juan Mayor Carmen Yulin Cruz said when announcing the policy. “No city police officer, no city employee will intervene to stop a cockfight,” “If federal agents want to, they'll have to do it alone.”

The prohibition was created by a provision in the Agriculture Improvement Act of 2018, enacted in 2019, by striking the part of the law which excepted the territories to the federal prohibition of animal fighting. Unlike the 50 states, none of the territories had individually decided to prohibit the practice. Animals, under US law, are property and the federal government has historically left states to make their own laws regarding property.

So how did a provision outlawing cockfights in the territories make its way into a multi-billion dollar Farm Bill in the first place? Several months prior to the Act being approved by Congress and signed into law by President Trump, former Illinois representative Peter Roskam suggested the addition.

ROSKAM AUDIO

Roskam was supported in this by several politicians, namely Oregon Representative Earl Blumenhauer.

BLUMENHAUER AUDIO

Opposing the measure

While the subject of this case, as well as this episode, are focused on Puerto Rico, the new law also affects other U.S. territories, and representatives from Guam, the Virgin Islands and Puerto Rico, which had no vote on the matter, all spoke passionately on the House floor against the provision prior to the Bill’s passing.

Congresswoman Stacey E. Plaskett, representing the Virgin Islands, opposed Roskam and Blumenhauer's provision.

VIRGIN ISLANDS REP AUDIO

Reps from Guam and Puerto Rico also echoed Plaskett's concerns. Notably, Puerto Rico's representative to congress, Jenniffer Gonzales-Colon gave additional arguments against the inclusion of the animal fighting ban.

COLON DECEMBER AUDIO

Gonzalez-Colon also introduced a Bill that would reverse the Bill afterwards, and which is now sitting in Committee.

APPEAL ARGUMENTS

Immediately following the passage of the Act, Galleros in Puerto Rico, with support from their congressional representative, governor and the mayors of every major city on the island, filed a suit challenging the case. The lower Puerto Rican court ruled against the cockers in the case, which led to the appeal currently awaiting ruling in Boston's First Circuit Court of Appeals.

The case in Boston argues the law:

1. **Violates 1st amendment freedom of cultural expression.** Argues that congress is trying to impose an arbitrary and unreasonable restraint upon the people. They're arguing here that cockfighting is a means of cultural expression for the Puerto Ricans, and thus impedes Puerto Ricans' pursuit of liberty, as guaranteed by the Constitution. This portion of the case was set out in oral arguments by the galleros' attorney Miguel Prado

PRADO AUDIO

2. **In outlawing that liberty, congress did not afford the territories any meaningful way to oppose the ban, also known as due process. The Due Process argument was argued in Boston by Maria Dominguez.**

DOMINGUEZ AUDIO

The court must first decide if cocking is a form of expression. If they decide it's not, they'll probably also rule against cockers' complaint that they were denied due process because there's no requirement for Due Process if the law didn't deprive them of the liberty of free expression, as far as the court is concerned.

My understanding on the First Amendment challenge is that it'll be tough sell to the court. As the lower court noted, the Supreme Court has been hesitant to classify activities as speech, fearing they'll open the door to claims that limitless number of conducts should be classified as speech.

Additionally, Cockers in the states have argued for First Amendment Protection in various courts as well, but to no avail.

I disagree with any argument against cocking being speech. Regarding the court's concern for opening the flood-gates to "me-too" claims that every activity under the sun should also be protected, I'll note that there's nothing stopping the court from limiting its scope, providing guidance or explaining its reasoning if it found cockfighting in Puerto Rico to be a protected speech. They've shown themselves more than capable of placing legislative guidance around a decision, so I don't think that excuse should stop them from making an honest assessment of the situation as it applies to the Puerto Rico cockfighting case, where congress has imposed its own definition of what constitutes animal cruelty onto a people who clearly do not agree with that definition. Simple logic shows that this law, then, corrodes the free exchange of ideas in our country, a practice the First amendment clearly aims to protect.

The Puerto Rico case is also unlike previous claims that cocking is speech, which were shot down by the courts.

As someone who has participated in the multi-generational activity of raising and caring for gamefowl and pre-prohibition fighting of gamefowl, I know that cockers derive a sense of identity from the practice of tending and witnessing these birds. Like all forms of expression and speech, it is a means by which we make sense of the world around us. The practice is used to impart lessons about life and to convey a cultural heritage from one generation to another. To me, that's an expression. If you're a member of the gamefowl community, you probably know this to be true, but it's difficult for an outsider to understand, and it's even more difficult to argue that fact within the constraints of the court. To that end, I think the Puerto Rican gamefowl community has done a lot more to bolster this idea than any previous case.

The cocking community on the island has worked for years to see the sport both legitimized and institutionalized. Depictions, paintings and sculptures of gamefowl are common throughout the island, and its history and tradition are common knowledge among its population. In short, while cocking may be a form of cultural expression in both the states and in Puerto Rico, the Puerto Rican cockers have actually exercised that expression more than cockers stateside, resulting in points of reference for the sentiment such as regulation and tax revenue, law they amended in 2007 with the passage of The Puerto Rico Gamecocks of the New Millenium Act. They've had cockpits declared parts of the Federal Historic Registry, and they've adopted the gamecock as the official bird of the Commonwealth, just to name a few examples of the actions they've taken to institutionalize what would otherwise be local sentiment. It's given them concrete examples to reference, which no doubt come in handy when you're 1700 miles from home in a federal courthouse arguing for the culture back home.

The takeaway for the rest of us here is if you value cocking, raising birds, breeding gamecocks, preserving bloodlines, etc. as a form of cultural expression, it's important to exercise that freedom while you have it, lest you lose it. For those of us in the states, where that expression

has been substantially limited by cockfighting bans, we should be careful not to take what's left for granted, lest it be taken away.

COMMERCE CLAUSE

Finally, the court in Boston must decide if Congress overstepped its authority when it invoked the Commerce Clause authority by making this law.

This topic was the primary theme in the oral arguments in court in early December. The judges seemed particularly interested in which of the cockers listed in the case would be liable to criminal prosecution under the specific provision in question, which makes it a crime to exhibit or sponsor a cockfight.

JUDGE AUDIO- ACTUAL PLAINTIFFS IN AN ACTUAL CASE

For the purposes of the Commerce Clause, the judges would like to identify the potential defendants that would be at risk of prosecution in the case. As many in the agriculture industry already know, they run into the issue of not knowing how broadly the statutes will be applied. The judges were clearly frustrated by the lack of assistance from Justice Dept lawyer, Jeff Clark.

CLARK AUDIO

Beyond the commerce clause, the exchange between the judges and the government lawyer illustrate the larger problem at issue with these types of laws. Animal welfare laws written by the Animal Rights activist groups, and which are often enforced by the animal rights enforcement officers or officers with training from animal rights groups, these laws, if challenged in court, are defended by lawyers with the animal rights organizations, and, as we saw in the case of Tommy Carrano last episode, they can be interpreted very broadly to include whomever these groups decide, rather than being enforced by the strict measure of law enacted for the common good.

The court should make a decision on the issue in the weeks ahead, and from a legal point of view, it'll be interesting to see which way they go. If the first circuit upholds the lower court's ruling against the cockers, they'd likely appeal to the supreme court, but it's not clear whether the supreme court will hear the case. This law could also be challenged by individual defendants at a later date, rather than the broad list of cockers in the current appeal. Individual defendants could challenge more specific aspects of the law, such as breadth of the wording as it applies to non-commercial interests, just to give one example of the many potential challenges.

You can find updates on the court case, as well as the documents from the federal docket, full audio of the oral arguments and links to the first circuit website on the website at Bloodlinepodcast.com. We'll leave you with that as we await the court ruling.

In the next episode, we'll dive into the history of cockfighting in England, where the sport enjoyed arguably its most enthusiastic following from any people before or since, including support from everyone from Kings to clergy to school children.

As always, thanks for listening. Bloodline is created by me, Jesse Sidlauskas. Theme music is from Lobo Loco, You Get the Blues. A special thanks in this episode to my wife, who had the idea to send me to Puerto Rico prior to the ban, and without whom this podcast would not be possible. Kady, thank you for your support.

As the judge points out, a broad interpretation of the law that would apply it to a ban on every backyard cockfight, might b

It'll be interesting to see what direction the judges decide to go

, he references the Supreme Court decision of *Gonzales v. Raich*, a case which questioned the authority of the federal government to prevent a California resident from growing and using their own marijuana, in which Justice Thomas, in his dissent, hinted at the need for the Court to temper its interpretation of the Commerce Clause, saying "Respondents ... use marijuana that has never been bought or sold, that has never crossed state lines, and that has had no demonstrable effect on the national market for marijuana. If Congress can regulate this under the Commerce Clause, then it can regulate virtually anything—and the Federal Government is no longer one of limited and enumerated powers."

Since the Puerto Rico cockers' case seems to incl

QUESTIONS/DISCUSSION

- How broadly are the terms exhibitor and sponsor to be interpreted? We don't know.

- How this differs from other challenges to the cockfighting ban: In the states, we had due process. Regardless of how fair, sincere or legal we think that due process was, for the purpose of the court, it was satisfied in the petitions, referendums, votes, etc. at the state level, and satisfied by our congressional and senate representation federally as we had voting representatives in congress who we elected. In the case of Puerto Rico, the island's politicians are almost unanimously opposed to the ban, and the island's congressional representatives spoke out against the ban in provision in Committees, they didn't have a vote in the matter.

But, as any cocker who's traveled will tell you, a friend-in-sport is a friend-in-sport. There's something universal about game fowl enthusiasts—our shared understanding, respect and appreciation for these birds—that crosses borders, bridges language barriers and stretches across time to make the cockpit a common context to those who gather there.

Standing:

Statute of limitations 6-year period passed. BC plaintiffs challenge would include challenges to laws enacted in 2002, 2007 and 2014. Plaintiffs argue that no need to seek redress since no agency had enforced those laws and cockfighting was legal throughout the statutory period, thus the limitation had not run. Plaintiffs also argue complaint timely filed under the "reopener doctrine" and wasn't barred by laches.

Court ruled that there was standing to challenge Congress' extension as well as the existing provisions.

Gelpi adds that the fact that they've not been enforced by federal gov doesn't mean they haven't applied to Puerto Rico.

TORRUELLA, Circuit Judge, dissenting.

I disagree with the order and would grant the stay. Nothing is lost by staying this matter until the Court hears the case. This is a law which was passed without Puerto Ricans having any participation in its enactment, which concerns matters that have a long tradition in local history. The least that should be done is stay its enforcement until they are heard.

