

# The assassination of Paula Cooper: Can this be law?

by Cesare La Farina

*Dr. Cesare La Farina, honorary associate chairman of Italy's Corte di Cassazione (Supreme Court), has sent us the communication which we reproduce here, on the ignominious case of the condemnation to death of Paula Cooper in the state of Indiana. We believe it extremely important that there be an international expression of concern regarding certain inhuman manifestations in the U.S. judicial apparatus, actions of a type well known to readers who have followed the political persecution to which Lyndon LaRouche has been subjected. The commentary is similar to an article by the same author already published in Il Giornale d'Italia.*

By a group of friends, all men of law, I have been invited to join my modest voice to the chorus which is being raised around the world, so that the death penalty inflicted on Paula Cooper may not be executed; that is, upon that wretched North American black girl, the author, it is true, of an atrocious crime, but still an adolescent, almost a child (15 years of age!) at the time she carried out that misdeed.

And so I am writing, but not without an unpleasant sensation of perplexity and doubt. Men of law are not insensitive to emotional tugs, but, also and above all, for men of law, Spinoza's solemn admonition should hold true, according to which before "*fere, indignari, detestari,*" it would be necessary, first and foremost, to "*intelligere.*" And we are not capable of "*intelligere*" in this case. We would have to have more than an approximate knowledge of United States criminal codes, which has not been supplied to us in the least by the very imprecise reports given by the mass media. What use would that be? Above all to dispel the suspicion, arbitrary though it is, that the legal wickedness of that case might be due to sadism and ill will on the part of the judges or jury. And further—ininitely more important—to ascertain whether there is any substance to certain shadows of profound incivility and juridical inhumanity which came across to us from that case.

To proceed to the denunciation of the most frightening of these shadows, it appears that the Indiana state penal code provides for the death penalty for adolescents and even children. To introduce a personal recollection, I shall say that when, scarcely out of my boyhood, I entered the magistracy, I perhaps was not fully aware of the fact that I was engaged in serving a code which, among its penal sanctions, provided at that time for the death penalty (it was abolished in 1944).

My moral discomfort was considerable when, as Assistant King's Prosecutor and Prosecuting Attorney, it fell upon me to prosecute very serious cases, in which the prospective outcome was the death penalty. I deem it good fortune, even my personal fortune, that none of the cases I tried had that macabre outcome.

*However, I would have refused to serve under a code that provided for condemnation to death of an adolescent or even a child.* But such a possibility was excluded *a priori, per tabulas*, it was out of the question. And whoever, out of factious ignorance, might be convinced of the contrary, is invited to read Articles 97, 98, and 65. n.I of the Rocco Code, in the original text.

To resume the thread of our discussion, while not being so naive as to postulate that all the penal codes of all the States in the world should be substantially identical, we are perhaps naive enough to suppose that no country in the civilized world would base its own ordinances on principles of incivility and inhumanity. So then, we would have to *check*. Leaving aside the quips about men of law and especially Italian judges knowing the laws in force in every State on earth, we would have wanted to have before our own eyes those penal laws of the state of Indiana, in an official text, or at least a reliable one, or in a trustworthy translation.

We won't dwell on the pitiful outcome of our grotesque and perhaps clumsy attempts at documentation. And therefore, we remain in the anguish of presuming correct, the report that in those variegated, and diverse legislations of those states (with a small "s"), one acquires the capability of distinguishing right and wrong, and therefore, also the capacity to be tried in a criminal court, *including the capacity to undergo the death penalty*, at an incredibly early age (in Indiana at 10 years!); let us recall that, for us, a minor under 14 years is, by definition, incapable of distinguishing right and wrong (see Art. 97 already cited). We also cannot grasp why, in those regions, the law does not provide for an intermediate span of age (which in our country is between 14 and 18 years; see the cited Art. 98), in which the capacity to be a subject of penal law is subordinated to the determination, on a case-by-case basis, of "the age of understanding," (the splendid, pregnant expression of the Zanardelli Code). All the less, do I find it logical that, even when the age of understanding has been ascertained, the fact of being a minor in the intermediate age group cannot, or rather, *must* not lead

to inflicting less serious sanctions (see Art. 98), especially when the general provision for that category of crime is the "trifle" which is the death penalty.

We hope, moreover, that we misunderstood the report according to which, in that region, there exists the incredible law that the minor is, indeed, to be condemned to death, but the penalty will be carried out only after he has reached majority; this would be, together with the fact that the sentence is not yet beyond appeal, one of the reasons why Cooper has not yet been executed. This is the expression of "exquisite juridical sensitivity," by which the adolescent, is in the meantime, raised, instructed, and educated in the state prisons, for the upcoming inexorable death which he, however, would not yet be capable of undergoing, we would say, of *savoring* fully his error in all of its totality. We remember vaguely the existence of such a law in some country on Earth; but perhaps we erred in believing that such a measure, which seems written in blood by Moloch's priests, could have been invented only by some isolated developing-sector State, or rather, to be blunter about it, by a collection of savages, who in their persistent tribal mentality, have poorly assimilated the ordering of civilized States.

We must again humbly state that we don't understand—whatever may be its constitutional basis—the alien logic of a great State (of federal but not unitary structure) in which the absolutely primary function of penal legislation, (at least to our mind, even more primary than external defense), especially in certain of its fundamental postulates (establishing the age for being tried under penal law, and, above all, the provision or non-provision of the death penalty, for the same crime), is, but for exceptional cases, decentralized and left up to the single federal states. Thus, there would be no Cooper case, if that wretched girl, while still an American citizen, had committed her misdeed in a nearby state, perhaps just a few kilometers away, in which there is no death penalty. Amazement, also, that the exclusive power of pardon devolves upon the governors of the single states, even though it is a manifestation of supreme sovereignty, the last residue of justice, which is "reserved" and properly belonging to the Supreme Heads of a nation.

Finally, we cite, textually, from the mass media, the following news item: "The state legislature of Indiana has just passed a law which raises the age limit for application of capital punishment from 10 to 16 years." Now, if the news is true, i.e., that there is already enacted in Indiana a law by which a defendant who was under 16 years old at the time of committing the crime could not be *sentenced* to the death penalty, then in our view, the Cooper case should be or could be understood as already closed and filed way. In fact, it is the legacy of a thousand-year-old juridical civilization, in the case of penal laws that succeed one another in time, that if the later law is more favorable to the criminal than the law of the time in which the crime was committed (Art. 2.3 of the Penal Code), then one applies the version whose measures are more favorable to the criminal (except where an irrevoc-

able sentence had been pronounced; and, to be sure, we don't know if the Cooper sentence would be described that way).

In any case, the new legislative situation would solicit, as clear as day, the ethical necessity for an act of clemency. But do these principles—which are so obvious to us—have legal currency in that New World?

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