

## The commonwealth and the PDP



BY RAFAEL HERNÁNDEZ COLÓN

Critics of commonwealth charge that it isn't defined, precise or concrete; that there have been different definitions of commonwealth proposed by the Popular Democratic Party (PDP) throughout the years, and that today different members of the party continue to propose

different definitions.

This, they say, was what prevented an agreement with the governing New Progressive Party (NPP) on the upcoming plebiscite.

Alejandro García Padilla took the bull by the horns at the PDP Convention held last month in Río Grande. The gubernatorial candidate and party president put forth the essence of commonwealth in seven principles, which were approved by acclamation by the convention.

Contrary to definitions put forth in recent years by the party, or by its members, the principles propounded by García Padilla rest on the law as it exists today; they aren't political constructs produced by fertile imaginations; they aren't wish lists. They are solid principles set forth in the laws of Congress, in our Constitution and the federal Constitution, in opinions of the Supreme Court of the United States and other federal courts, and in decisions of the General Assembly of the United Nations.

The first principle is that commonwealth was created by means of a compact between the U.S. Congress and the people of Puerto Rico. This rests on U.S. Public Law 600 of 1950 and Public Law 447 of 1952, numerous U.S. Supreme Court opinions and Resolution 748 (1953) of the United Nations General Assembly.

The second and third principles are that commonwealth is an autonomous political entity and that, like the states, it is sovereign in matters not governed by the U.S. Constitution. Several U.S. Supreme Court opinions vouch for this: *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663; *Examining Bd. of Engineers, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572; and *Rodríguez v. Popular Democratic Party*, 457 U.S. 1. So does U.N. Resolution 748 (1953).

The fourth principle, that our American citizenship and our loyalty to the principles of the U.S. Constitution are the indispensable foundations of our permanent union with the U.S., is inscribed in the preamble of the commonwealth Constitution and in U.S. Supreme Court decisions such as *Afroyim v. Rusk*, 387 U.S. 253, establishing the permanency and irrevocability of U.S. citizenship.

The fifth principle, that Congress relinquished its plenary territorial powers over Puerto Rico,

is clearly established in *Examining Bd. of Engineers, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572.

The sixth principle, that Congress can treat Puerto Rico differently from the states, as long as it has a rational basis for doing so, goes back to U.S. Supreme Court opinions in *Downes v. Bidwell*, 182 U.S. 244, and its most recent incarnation, *Harris v. Rosario*, 446 U.S. 651, whose holding, when read in the light of the opinions in *Calero*, *Examining Board* and *Rodríguez*, isn't

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that Puerto Rico is under the plenary territorial powers of Congress, but that in the exercise of its residual powers under the compact—which stem, among other sources, from Article IV Sec. 3 of the Constitution—Congress isn't constrained by all the provisions of the U.S. Constitution when legislating for Puerto Rico.

The seventh principle is that being parties to a dynamic relationship, the Congress and the people of Puerto Rico, in common agreement, may broaden the commonwealth's autonomy. This is supported by numerous Supreme Court opinions in cases, such as *United States v. Lara*, 541 U.S. 193. This means that changes in the relationship may be made by mutual agreement between Congress and the people of Puerto Rico, but these changes must be within the nature of commonwealth as defined by the other six principles. This doesn't imply a change to another type of status, such as free association or statehood. The PDP stands today for commonwealth, and will stand for it tomorrow when enhancements of this status are made.

The seven principles define the commonwealth in a juridical sense. It is fitting that it should be done this way, because commonwealth is a juridical reality; a legal entity existing under the constitutional law of the United States of America and recognized under international law by the United Nations. This entity must be included in the plebiscite ballot in order for the people of Puerto Rico to have a valid exercise of self-determination. Formulations of what commonwealth should be, if not anchored in existing law, might be debatable as to their constitutional viability, and thus are objectionable. Not this one.

Beyond the issue of inclusion in the plebiscite, the PDP has made clear to the people of Puerto Rico its position on our political status. The PDP is the only party in Puerto Rico that supports the existing relationship between Puerto Rico and the U.S. This is a crucial position with regard to the party's capacity to run our government and engage our problems. Yet this fact isn't clearly perceived by those Puerto Ricans who tend to believe that there is no difference between electing a pro-commonwealth government and electing an anticommonwealth government to run the commonwealth. They don't understand that by failing in governance, the NPP gains in politics because it goes on to place the blame on commonwealth, not on its administration.

Let us not forget that commonwealth is our reality and that statehood, free association and independence are aspirations. No adult in Puerto Rico should be naïve enough to expect that we are going to become a state of the union, much less a republic, within his or her lifespan. There isn't, and won't be, according to electoral trends, a substantial political majority to bring about such a change. The instruments of government that we have, and will have during our lifetimes, are those provided by the commonwealth. Our economic progress, our quality of life, our social justice, depend on the use we make of these instruments.

You can't at the same time berate them and use them effectively. Unfortunately, many of our voters haven't become aware of this and elect NPP governments to administer the commonwealth, which the NPP despises. This is like placing a boxer in a ring with one hand tied behind his back, and mentally conditioned to punch himself with the other hand. The truth behind this metaphor can be perceived if one analyses the effects the federal minimum wage and the loss of Section 936—brought about by NPP governments—have had on our economy. But the one who loses in this fight isn't the boxer who blames his loss on commonwealth; it is the people of Puerto Rico.

Status positioning isn't enough to confront our challenges today, but it is the foundation upon which sophisticated and sectorially targeted policies must be developed by the commonwealth and federal governments in order for our economy to achieve, once again, a respectable growth rate with which we can improve our quality of life and deepen our social justice. ■

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*Rafael Hernández Colón is a three-term (12-year) former governor of Puerto Rico (1973-76 and 1985-92). He served as Justice secretary (1965-67) and Senate president (1969-72). He was president of the Popular Democratic Party for 19 years. Comments on this article are welcome at [caribbeanbusiness.pr](http://caribbeanbusiness.pr). Go to [Sign in](#) link on the homepage. Emails also may be sent to [column@caribbeanbusinesspr.com](mailto:column@caribbeanbusinesspr.com).*