

Status: End game

By : RAFAEL HERNANDEZ COLON

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A couple of weeks ago, I was having lunch with Manny Casiano, relaxing and reflecting on our experiences and concerns about Puerto Rico. The conversation, as was to be expected, at one point touched upon the subject of status and, surprisingly, Manny, a fervent statehooder, and I, a long-embattled commonwealth, found ourselves in agreement on one point: As long as the status question remains unresolved, Puerto Rico will lack the capacity to undertake and maintain long-term initiatives essential to a healthy rhythm of growth and qualitative development.

Our parties are aligned, not by liberal or conservative values as in mature democracies, but by political status values introducing a dysfunction into our electoral process that puts the constitutional order at issue in every election. Political status determines the basic premises of our economic, educational, social, and cultural policies. Conflict over status politicizes public administration and fosters programmatic discontinuity. Status, Manny and I agreed, is an issue Puerto Rico needs to address and resolve.

So, what else is new? Isn't this what we have been trying to accomplish for over a century? Yes and no. Yes, we have been trying to accomplish this by pursuing our own status preferences. No, we haven't pursued it by accepting the solution may not be the one each of us prefers. We have pursued our goal in a partisan way, as if it were a religious truth to be defended until it prevails eternally. We haven't pursued it in a collective, democratic way. We haven't pursued it as a people with parties operating under basic democratic premises--to win or to lose--in order to bring the question to a final resolution.

From this perspective, I ran by Manny some ideas as to how the problem might be resolved. Manny found them interesting, and asked if I wished to present my ruminations to the readers of CARIBBEAN BUSINESS through a series of articles. After giving this some thought, I decided to do so given the nature of CARIBBEAN BUSINESS as a newspaper and that of its readership.

Since I left the governorship in 1993, I have been asked by some of our daily newspapers to write columns on matters of public interest. I have declined, because I have no interest to enter into the political thicket. I felt, and feel, expressions of mine, on whatever subject, in the daily newspapers of Puerto Rico would immediately stir controversy of some sort with somebody, and I have no desire to get into dogfights any more.

I have expressed my views on many subjects, however, in books or in scholarly publications in Puerto Rico, such as the law reviews, or through publications in the U.S., Spain, and Latin America. Inasmuch as CARIBBEAN BUSINESS doesn't cater to the political fare, I venture to present my thoughts through this series of articles, which I hope will shed some light on how we need to go about resolving the status

question. If this stirs serious reflection on this matter, I will feel contented. Nothing more pretentious is intended.

The ideas I will share with the readers of this newspaper are the product of a lifelong experience in dealing with status. Since writing my senior thesis at Johns Hopkins on this subject back in 1956, I must have written more than 100 pieces on status from the juridical, political, economic, cultural, and historical perspectives. I have appeared at numerous hearings before the U.S. Congress on status, engaged in university debates and lectures, and given countless television, radio, and newspaper interviews in Puerto Rico, in the U.S., and in foreign countries.

To name a few of my governmental experiences with status, as Secretary of Justice of the Commonwealth, I had an important role in preparing the 1966 U.S.-Puerto Rico Status Commission Report on the Status of Puerto Rico. As Governor, I undertook two major efforts to resolve the matter with Congress, one in 1973 through an Ad Hoc Committee appointed by President Nixon and myself, which presented its report to Congress and to the President in 1975, and the other in 1989 when as Governor I led an effort integrated by all three political parties of Puerto Rico to obtain a resolution of the problem from Congress. This effort led to the House's unanimous approval of a bill to that end, but the issue ultimately foundered in the U.S. Senate in 1991.

From these experiences, I have come to certain ideas for the resolution of the status problem, which I will express in this series of articles, which won't be pro a particular solution to the status question but rather for arriving at a resolution, whatever that may be. Let there be no doubt that my preferred solution remains commonwealth, but at this time I don't write to gain support for commonwealth. I write to propose a strategy to resolve the status question and let the chips fall where they may.

The strategy I will propose is composed of many steps. It needs explanation and reflection at every step so the why may be understood. It also needs clarification of the juridical and political premises involved and remembrance of alternative strategies that have failed in the past.

The status problem may be resolved only by the Congress of the United States and the people of Puerto Rico coming to an agreement as to the solution. Both parties must come to a meeting of the minds. There is no other way.

The prestigious U.S.-Puerto Rico Status Commission report of 1966 cleared up the misconception that Congress may unilaterally impose a status choice on the people of Puerto Rico:

“From the examination of the legal and constitutional factors affecting the status question, the Commission concludes:

1. The policy governing the relationship between the United States and Puerto Rico is and should continue to be based on the principles of mutual consent and self-determination.

2. In accordance with this policy and these principles, it is essential to any change in political status that Congress fully understand the wishes of the people of Puerto Rico in order that it can be properly guided in working with the people of Puerto Rico to carry out their wishes.
3. The right of the U.S. citizens of Puerto Rico to participate effectively in decisions affecting their present and future welfare is protected by the Constitution of the United States and the Constitution of Puerto Rico. . .U.S. citizenship. . .carries with it basic personal and institutional protections that can't be encroached upon by the Legislature of Puerto Rico or the Congress of the United States. Present constitutional doctrine, therefore, wouldn't permit any action rendering ineffective the right of U.S. citizens of Puerto Rico to participate in the determination of their future, whether it will be continued and developed commonwealth, statehood, or independence.”

Moreover, the history of the past century teaches us the Congress of the United States won't undertake, on its own, steps to resolve the status problem of Puerto Rico. Although individual members of Congress from time to time have presented bills on Puerto Rico's status--such as the infamous Tydings bill of the 1930s--since the Foraker Act was approved in 1900, Congress has never acted on its own in this matter. The Jones Act in 1917, the Elected Governor's Act in 1947, and the Commonwealth Constitution of 1952 were all Puerto Rican initiatives.

The history of these bills and of others bears out that the initiative must come from Puerto Rican elected officials. But, the two major political parties in Puerto Rico have the power to block in Congress whatever initiative the ruling party undertakes to resolve the status problem, and will exercise that power if they find themselves at a disadvantage within that initiative. Such was the history of the Aspinall bill in 1963, the New Compact bill in 1976, and the Young bill in 1996.

In light of these lessons, which we learn from history, it is essential that the two major political parties in Puerto Rico and the Independence Party come to an understanding as to how the objective might be pursued in a way that is fair to all of them and which will involve the people of Puerto Rico and Congress in a decisional process leading to a final resolution.

This understanding among the parties will be the subject of my next article.