

Status: End game III

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The Constitutional Convention provided for in the Commonwealth Constitution would articulate democratically and dynamically the will of the people of Puerto Rico in a way that would enable us to engage Congress in a process leading to a resolution of the status issue. This Convention would transcend the quadrennial electoral cycle and, as a constitutional representative of the will of the people, would enjoy the recognition of Congress throughout its existence.

The Constitutional Convention has been discussed for some time as the appropriate mechanism for resolving the status issue. However, there are important differences in the nature of the constitutional conventions that have been the object of public debate, and it becomes necessary to be specific because the juridical nature of the convention is determinant of the effectiveness of the mechanism.

Some have proposed that by way of a Constitutional Convention, the Legislature should convene a People's Assembly whose delegates, elected by the people, would express our collective will to the Congress, which would respond one way or another. Those who propose this mechanism find in it a certain purity and flexibility because it doesn't rely on the processes provided for in the Commonwealth Constitution and isn't subject to what they consider to be the limitations, which our constitution imposes on a Convention.

However, the proposed People's Assembly ignores one of the noble truths that failed status initiatives have taught us: Status initiatives set in motion are affected by our general elections, and the results of elections are unpredictable. Legislating, convening, and electing a People's Assembly, setting its deliberative processes in motion, arriving at a decision, presenting the decision to Congress, and working it through the Congress to obtain the desired result will require more than four years.

Basic Puerto Rican status politics, from which we derive our noble truths, teach us that if the proposal which the Assembly would make to Congress doesn't coincide with the status preference of the party that comes into power in the next election, this party will repeal the law under which the Assembly was organized to strip the Assembly of its legitimacy and its capability to obtain a result from Congress. This may sound heavy handed, but it's a fact of status politics as we know it.

The Constitutional Convention must be invulnerable to second thoughts and shifting political fortunes in the quadrennial elections. Once the Convention is convened, it must remain in existence until the necessary results are achieved, be it for eight or 12 years if necessary. This is only possible through a Constitutional Convention convened through the provisions of the Commonwealth Constitution. Once

such a Convention has been convened, it is beyond the power of the government--the one that convened it or succeeding governments--to adjourn it. The power to do so shifts to the people.

The procedure to convene the Convention, provided in Article VII, Section 2 of our constitution, requires the Legislature to approve the call for the Convention by a two-thirds majority of each House and that such a call be put to the voters in the next election, who must approve it by majority vote. Taking into account that this same procedure must be followed to repeal the call, this puts the Convention, once convened, beyond the scope of power of any incumbent government.

This resilience to the winds or whims of politics is essential for the mechanism to be effective. The Convention would be the supreme representative of the will of the people on status. Its constitutional structure will enable it not only to express that will but also to sustain it--notwithstanding the political conveniences of the incumbent government--throughout whatever period of time is necessary to come to a meeting of the minds with Congress. In bringing the issue to a resolution, sustainability of the expressed will of the people over the necessary period of time is of the essence.

The call for such a Convention, however, can't be undertaken without the prior understanding of the political parties mentioned in my previous articles. Two-thirds majorities in both houses of the Legislature are hard to come by. Today there is one in the Senate, but not in the House. Also majorities--not pluralities--in general elections are extremely rare, more so if the vote is on the status issue.

So we go back to the proposition with which I started this series of articles. Our parties have the power to block each other's status initiatives, so they must have the will to resolve the issue jointly and, in calling such a Convention, take the risk that the issue may not be resolved according to their particular preference. To take this step, their leadership must be profoundly convinced that either they come together to resolve the issue or we will be deadlocked for as long as the people of Puerto Rico are willing to continue with our political parties as we know them.

There is no escaping this deadlock. No unilateral ingenuity will avail. If one-sided advantage is sought, either by legislating plebiscite definitions or through bills in Congress with definitions favorable to the party in power, sooner or later, the process will be deadlocked. The realization of the noble truth of structural deadlock in the system is necessary to rise above the short-term electoral use of status to the level of serious commitment to resolve the issue.

Assuming there is a will to resolve the issue, the Commonwealth Constitution's call for a constitutional convention offers the best mechanism--one with the necessary life span and immunization from political tampering--to articulate the will of the people and sustain the matter before the Congress for a resolution.

But what about the objection some have raised that such a convention can only amend the Commonwealth Constitution within the terms of the present compact with Congress. If this is true, they

say, the Convention can't change the constitutional order into that of a perfected commonwealth or to federated statehood, free association, or independence.

The point is well taken, but it isn't dispositive of the issue. It is true the Convention can't effect juridical changes that trespass upon the Federal Relations Act, because this is prohibited by Article VII, Section 3 of our constitution. This was a condition established by Congress in order to ratify our constitution. But this doesn't mean the Convention can't express to Congress the will of the people of Puerto Rico as to the repeal of, or changes to, the Federal Relations Act. This is necessary to bring about change in whatever form to the existent constitutional order.

There is no constitutional limitation to the individual or collective right to freedom of speech, or to the right of the people to petition Congress for self-determination. Further, the fact the Convention can't make changes that infringe on the Federal Relations Act doesn't mean such changes can't be made, if upon the request of the Convention, the Congress amends or repeals the Federal Relations Act in order to make the changes happen.

A Constitutional Convention convened under the appropriate constitutional procedures would be a political body with the capacity to raise whatever issues it desires with Congress and to deal and negotiate with Congress whatever proposals it presents to that body. If Congress rejects its proposals, the Convention would be powerless to effect juridical changes that alter the Federal Relations Act. If Congress accepts whatever proposal, then it lies within the power of Congress to enable the people of Puerto Rico to effect through the Convention the desired changes to the constitutional order.

If all of this about the Constitutional Convention is so, some would ask why I didn't try it while I was governor. This is a fair question. The answer is that at that time, we thought plebiscites under Puerto Rican initiatives would work. When that turned out not to be so, we thought previous congressional definition of the alternatives and perhaps commitment to implement our decision should be procured. But that also went sour in Congress, and it is from these experiences and the reality of deadlock that one comes to the realization that another strategy is necessary, one that doesn't repeat past mistakes.

Several questions on the Convention remain unanswered in this article.

How will the delegates be selected?

How about proportional representation or the representation of civil society?

How will this Convention be constituted in order to provide for a dynamic process to sequentially engage the Congress?

How can we make its internal processes and dealings with Congress fair and equitable to all parties?

These questions will be addressed in the next article of this series.