On the nature of commonwealth V

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To determine the sovereign—within the U.S. constitutional system—or territorial, colonial nature of the Commonwealth of Puerto Rico, we examined in my past column the process whereby 32 sovereign states were admitted after the original 13 had formed the union. This historical review established that the states of the union are sovereign not because they were admitted into the union, but because they were created through constitutions adopted by the free will of the people of the states. This must be borne in mind when we examine the process by which the commonwealth was created, initiated by Congress through Law 600 of 1950:

"An Act to provide for the organization of a constitutional government by the people of Puerto Rico; whereas the Congress of the United States by a series of enactments has progressively recognized the right of self-government of the people of Puerto Rico; and whereas under the terms of these congressional enactments an increasingly large measure of self-government has been achieved: Therefore, be it enacted by the Senate and House of Representatives of the United States in Congress assembled that, fully recognizing the principle of government by consent, this Act is now adopted in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption. Sec. 2. This Act shall be submitted to the qualified voters of Puerto Rico for acceptance or rejection through an islandwide referendum to be held in accordance with the laws of Puerto Rico. Upon approval of this act by the majority of the voters participating in such referendum, the Legislature of Puerto Rico is authorized to call a constitutional convention to draft a constitution for the said island of Puerto Rico. The said constitution shall provide a republican form of government and shall include a bill of rights."

Section 3 of Law 600 required congressional approval of the Puerto Rico Constitution before it could go into effect. Sections 4 and 5 repealed certain sections of the Organic Act of 1917. The sections of this statute left in force were then entitled the Puerto Rican Federal Relations Act. This act is meant to be the compact of association between the union and Puerto Rico.

Law 600 was the response of Congress to a petition of Puerto Rico's leadership for a legal status that would square with the factual sharing of power over Puerto Rico between the insular and federal governments. The Elective Governor Act of 1947 had been the culmination of a process of congressional surrender of control over local affairs. Since the 1948 elections, Puerto Rico enjoyed a de facto self-government, comparable, as far as freedom of federal control is concerned, to any state government. Law 600 was meant to materialize this reality into a legal status. The procedure provided in Law 600 was carried out. The Constitution was framed and Congress approved it. Whether the resulting

Commonwealth of Puerto Rico is sovereign or is still under the plenary authority of Congress is the essential question as to the legal nature of the status.

As to substance, Law 600 doesn't differ at all from the enabling acts passed in the procedure for admission into the union of new states. The difference, of course, lies in the fact that the latter are accompanied by a promise of admission into the union. Law 600 carried no such promise. However, the fact of admission as a member of the union isn't the circumstance that turns a territory into the sovereign political entity known as a state.

The necessary factors for the formation of a state are present in the case of Puerto Rico. Law 600 is unequivocal in its grant of authority to create a constitution, which carries with it the relinquishment of the intrastate sovereignty Congress had over Puerto Rico. As previously pointed out, within the American constitutional system, none but a people with sovereignty can create a constitution. Once the constitution was framed and ratified, a sovereign political entity was born in Puerto Rico.

In bringing about the establishment of the commonwealth, Congress didn't operate in a vacuum completely devoid of law and guiding principles. On the contrary, it moved within an intricate structure of constitutional law. Authorization to form a constitution has been the procedure followed by Congress to admit territories as new states of the union. It hasn't been followed consistently since 1791 by mere chance. Nor did it originate fortuitously. The creation of a new state isn't regulated in the Constitution, but each step in the procedure is full of legal significance and geared to the democratic principles that underline our federal system of government. This is the reason why a constitution must first be framed by a people enabled to do so. In this fashion, a free people empower a sovereign state. Democratic theory demands that these steps be taken. Abdication of the territorial power by which Congress governed the people is what makes the new state sovereign in conjunction with the constituent act.

Congress wanted the people of Puerto Rico "to organize a government pursuant to a constitution of their own adoption." To realize this, it had to move within the referred procedure of American constitutional law. Under our system of government and of law, constitutions for the internal government of a people aren't made while the Congress retains full authority over the matters entrusted to the government being created. The birth of one authority presupposes the termination of the other. When the political process initiated by Law 600 came to an end with congressional ratification of the constitution, Puerto Rico was constituted into a sovereign political entity attached to the U.S. As such, it took the place of Congress in the government of our local affairs.

The above conclusion isn't shared by all students of the legal nature of the commonwealth. Different methods to ascertain the effects of the law have yielded different results. One such approach was through the legislative history of Law 600 and the Constitution of Puerto Rico. The product was one of the best analyses ever made of legislative history. It was undertaken by David Helfeld. The evidence he found led him to the conclusion that there had been no irrevocable grant of authority to Puerto Rico, and that in constitutional theory it remained a territory. Congressional intent, according to Helfeld, wasn't clearly

ascertainable. However, he felt, the dominant mood in Congress was paternalistic and inconsistent with permanent congressional abdication of authority over Puerto Rican local affairs.

From my point of view, there is no need to recur to the legislative history of Law 600 or of Law 447 of 1952, approving our constitution, to ascertain their legal consequences. Law 600 is unequivocal in expressing congressional intent for Puerto Rico to be governed by a constitution adopted by its people. This is the decisive factor for determining whether Puerto Rico constitutes a territory. The legal consequences of authorizing a people to frame their own constitution are to be drawn from constitutional law. When the language of a law is clear and unambiguous, recurring to legislative history for interpretation is inappropriate as a method of legal construction.

Further, I believe the legislative history, if analyzed in light of the theory in these columns, doesn't lead to the conclusion that there was no permanent abdication of authority. The major piece of evidence from which Helfeld draws his conclusion was the treatment accorded to the constitution when it came up for congressional approval.

Yet, state constitutions undergo the same ordeal. Congress has been equally paternalistic as to many of them. If we accept that in the American constitutional system a constitution may not be framed by a territory unless Congress abdicates the power it has over the matters that come under such constitution, then a paternalistic mood when that constitution comes up for congressional approval isn't inconsistent with a permanent abdication of power. Amending constitutions before approval is nothing more than the exercise by Congress of a power the Supreme Court calls political and is solely within the discretion of Congress. What is of legal importance is the constitutional process set in motion by Congress, not the prevailing mood when it acted.

The problem of searching for the answer through the congressional intent behind Law 600 and the Constitution is that it views the Puerto Rican case in isolation. The answer derived in that fashion is inadequate because it fails to compare the history of American territories in their transition to sovereign status. Only against that background can we draw from the legislative history a satisfactory constitutional conclusion as to the nature of the commonwealth status. I will go further into this in my next column.