Commonwealth and the U.S. Constitution (III)

By : RAFAEL HERNANDEZ COLON

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I have set out in this series of columns to establish that our relationship by compact to the United States is a bilateral legally binding relationship protected by the U.S. Constitution. This proposition is wrongfully denied by the White House Report on the Status of Puerto Rico. It is also the mistaken premise on which the bill for a status plebiscite presented by Resident Commissioner to Congress Fortuño rests.

By denying the validity of the compact, the Task Force Report and the Fortuño bill characterize the Commonwealth relationship as one that subjects Puerto Rico to the plenary powers of Congress under the territorial clause of the U.S. Constitution, and therefore they disqualify Commonwealth as a permanent alternative in the plebiscite they propose.

In my previous columns, I have established that the binding nature of the compact must be determined by a functional and historical analysis of the territorial power vested in Congress. That this analysis bears out that Congress can divest itself of the territorial power by enabling territories to enact their own Constitution and join the Union, by granting independence to the territory, or by incorporating the territory and thus triggering the constitutional limitations on its power. And the same by compact, as was the case of the Northwest Territories and the Ordinance enacted by the First Congress under the U. S. Constitution in 1789.

The use of compacts was very frequent during the first century of American history. Compacts were made among the states and by the states with Congress. Indeed, a congressional practice may be said to have developed qualifying admissions to statehood through compacts. These compacts entered upon as requisites to admission came before the Supreme Court on numerous occasions. The object of the compacts was generally to regulate matters of property. The compact with Michigan was considered in Cooper v. Roberts, 59 US 173, 15 L. Rd. 338 (1855). The court noted therein that the United States has adhered to the policy of the various compacts with the people of the newly formed states with care and constancy.

In Beecher v. Wetherby, 24 L. Ed. 440, 95 US 518 (1887) the compact with Wisconsin was found to contain an “unalterable condition of the admission obligation upon the United States.” 24 L. Ed. 441.

The compact with Minnesota was upheld except where it impinged upon the equality between the states contemplated by the Constitution.

The case of Green v. Biddle, 8 Wh. 1, 5 L. Ed. 547, decided in 1823, is an excellent example of the use of compacts in early American history to regulate relations among sovereigns. When Virginia agreed to the

formation of Kentucky from within her territory, a compact was entered between the inchoate State of Kentucky and Virginia regarding the applicability of Virginia law to interests in land in Kentucky. Kentucky passed an act inconsistent with the compact. It was challenged in the courts. To defend the action taken by Kentucky, it was argued to the Supreme Court that the compact was invalid because it surrendered rights of sovereignty, which were inalienable. This is the same argument used to challenge the validity of the Commonwealth compact.

The Supreme Court said this contention "rests upon a principle, the correctness of which remains to be proved. It is practically opposed by the theory of all limited governments, and especially of those that constitute this Union. The powers of legislation granted to the government of the United States, as well as to the several state governments, by their respective constitutions, are all limited. The article of the Constitution of the United States, involved in this very case, is one, among many others, of the restrictions alluded to. If it be answered that these limitations were imposed by the people in their sovereign character, it may be asked, was not the acceptance of the compact the act of the people of Kentucky in their sovereign character? If then, the principle contended for by Kentucky be a sound one, we can only say that it is one of a most alarming nature, but which, it is believed, can't be seriously entertained by any American statesman or jurist." 5 L. Ed. 569. In a similar fashion, the contention that the compact with the people of Puerto Rico isn't binding is one that can't be seriously entertained.

It was also argued to the Supreme Court that the compact didn't come within the constitutional prohibition to impair the obligation of contracts. To this the Supreme Court answered: "A slight effort to prove that a compact between two states isn't a case within the meaning of the Constitution, which speaks of contracts, was made by the counsel for the tenant, but wasn't much pressed. If we attend to the definition of a contract, which is the agreement of two or more parties, to do, or not to do, certain acts, it must be obvious that the proposition offered, and agreed to by Virginia, being accepted and ratified by Kentucky, is a contract. In fact, the terms compact and contract are synonymous; and in Fletcher v. Peek, the chief justice defines a contract to be a compact between two or more parties. The principles laid down in that case are that the Constitution of the United States embraces all contracts, executed or executory, whether between individuals, or between a state and individuals; and that a state has no more power to impair an obligation into which she herself has entered than she can the contracts of individuals. Kentucky, therefore, being a party to the compact that guaranteed to claimants of land lying in that state, under titles derived from Virginia, their rights as they existed under the laws of Virginia, was incompetent to violate that compact, by passing any law that rendered those rights less valid and secure." 5 L. Ed. 570.

This review of the use of compacts during the first century of American history to regulate the relationship between Congress and territory, between Congress and states, and between states and other states bears out that the concept of compact is a hallowed institution of American constitutional heritage, firmly rooted in legislative practice and in the precedents of the courts. Though it should suffice to attest to the validity of the use of a compact to cement the permanent relationship of Puerto Rico to the U.S., I will go on to demonstrate other constitutional foundations that provide the broad legal basis upon which this compact rests permanent, inviolable and secure.